DOCUMENT RESUME

ED 318 389	IR 014 061
TITLE	Satellite Home Viewer Copyright Act. Hearings on H.R. 2848 before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, One Hundredth Congress (November 19, 1987 and January 27, 1988).
INSTITUTION	Congress of the U.S., Washington, D.C. House Committee on the Judiciary.
PUB DATE	89
NOTE	751p.; Serial No. 89. Portions contain marginally legible type.
AVAILABLE FROM	Superintendent of Documents, Congressional Sales Office, U.S. Government Printing Office, Washington, DC 20402.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF04/PC31 Plus Postage.
DESCRIPTORS	*Cable Television; *Communications Satellites; *Copyrights; Federal Legislation; Hearings; *Intellectual Property; *Legal Responsibility; *Policy Formation; Telecommunications
IDENTIFIERS	Congress 101st

ABSTRACT

These hearings on the Satellite Home Viewer Copyright Act (H.R. 2848) include: (1) the text of the bill; (2) prepared statements by expert witnesses (including executives of satellite companies, the Motion Picture Association of America, and cable television associations); (3) transcripts of witness testimonies; and (4) additional statements (consisting mostly of letters from telecommunications executives to Congressman Robert W. Kastenmeier). Appended are legislative materials (Parts 1 and 2 of House of Representatives Report Number 100-887, on the Satellite Home Viewer Copyright Act), additional materials provided by witnesses, and miscellaneous correspondence. (GL)

****
*   Reproductions supplied by EDRS are the best that can be made   *
*   from the original document.   *
****

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☒ This document has been reproduced as received from the person or organization originating it

☐ Minor changes have been made to improve reproduction quality

- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy

SATELLITE HOME VIEWER COPYRIGHT ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND
THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST AND SECOND SESSIONS

ON

H.R. 2848

SATELLITE HOME VIEWER COPYRIGHT ACT

NOVEMBER 19, 1987, AND JANUARY 27, 1988

Serial No. 89

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
89-491 ≈ WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

COMMITTEE ON THE JUDICIARY

PETER W. RODINO, Jr., New Jersey, *Chairman*

JACK BROOKS, Texas
ROBERT W. KASTENMEIER, Wisconsin
DON EDWARDS, California
JOHN CONYERS, Jr., Michigan
ROMANO L. MAZZOLI, Kentucky
WILLIAM J. HUGHES, New Jersey
MIKE SYNAR, Oklahoma
PATRICIA SCHROEDER, Colorado
DAN GLICKMAN, Kansas
BARNEY FRANK, Massachusetts
GEO. W. CROCKETT, Jr., Michigan
CHARLES E. SCHUMER, New York
BRUCE A. MORRISON, Connecticut
EDWARD F. FEIGHAN, Ohio
LAWRENCE J. SMITH, Florida
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
HARLEY O. STAGGERS, Jr., West Virginia
JOHN BRYANT, Texas
BENJAMIN L. CARDIN, Maryland

HAMILTON FISH, Jr., New York
CARLOS J. MOORHEAD, California
HENRY J. HYDE, Illinois
DAN LUNGREN, California
F. JAMES SENSENBRENNER, Jr., Wisconsin
BILL McCOLLUM, Florida
E. CLAY SHAW, Jr., Florida
GEORGE W. GEKAS, Pennsylvania
MICHAEL DeWINE, Ohio
WILLIAM E. DANNEMEYER, California
PATRICK L. SWINDALL, Georgia
HOWARD COBLE, North Carolina
D. FRENCH SLAUGHTER, Jr., Virginia
LAMAR S. SMITH, Texas

M. Elaine Mielke, *General Counsel*
Arthur P. Endres, Jr., *Staff Director*
Alan F. Coffey, Jr., *Associate Counsel*

Subcommittee on Courts, Civil Liberties, and the Administration of Justice

ROBERT W. KASTENMEIER, Wisconsin, *Chairman*

MIKE SYNAR, Oklahoma
PATRICIA SCHROEDER, Colorado
GEO. W. CROCKETT Jr., Michigan
BRUCE A. MORRISON, Connecticut
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JOHN BRYANT, Texas
BENJAMIN L. CARDIN, Maryland

CARLOS J. MOORHEAD, California
HENRY J. HYDE, Illinois
DAN LUNGREN, California
MICHAEL DeWINE, Pennsylvania
HOWARD COBLE, North Carolina
D. FRENCH SLAUGHTER Jr., Virginia

Michael J. Remington, *Chief Counsel*
David W. Beier, *Counsel*
Virginia E. Sloan, *Counsel*
Susan L. Coskey, *Counsel*
Thomas E. Mooney, *Associate Counsel*
Joseph V. Wolfe, *Associate Counsel*

CONTENTS

HEARINGS HELD

Page
November 19, 1987 1
January 27, 1988 173

TEXT OF BILL

H.R. 2848, 100th Congress, 1st Session (1987) 2

WITNESSES

Bergland, Bob, Executive Vice President, National Rural Electric Cooperative Association 300
  Prepared statement 302
Bliss, Roy L., Executive Vice President and Chief Operating Officer, United Video, Inc.; on behalf of United Video, Inc., Southern Satellite Systems, Inc., and Eastern Microwave, Inc 96
  Prepared statement 136
Boggs, Timothy A., Vice President, Public Affairs, Warner Communications Inc.; on behalf of the Motion Picture Association of America 48
  Prepared statement 52
Brown, Richard L. (Rick), Home Satellite Television Association 300
  Prepared statement 320
Ellison, Mark C., Vice President of Government Affairs and General Counsel, Satellite Broadcasting and Communications Association of America 96
  Prepared statement with supplement 98
McCauley, Brian, President, Netlink USA 206
  Prepared statement 246
Malara, Anthony C., Vice President, Affiliate Relations and Distribution, CBS Television Network; accompanied by Phillip Jones, CBS Television Network Advisory Board, and Vice President and General Manager, KCTV, Kansas City, Missouri 206
  Prepared statement 238
Medress, Mark F., Vice President for New Business Opportunities, Video Cipher Division, General Instrument Corporation 23
  Prepared statement 30
Metzger, Mary C. (Kazie), President, Satellite Broadcast Networks (SBN) 96
  Prepared statement 158
Mooney, James P., President, National Cable Television Association 48
  Prepared statement 70
Oman, Ralph, Register of Copyrights, Library of Congress; accompanied by Dorothy Schrader, General Counsel, Copyright Office; and Andrea Zizzi, Senior Attorney, Copyright Office 174
  Prepared statement 177
Padden, Preston R., President, Association of Independent Television Associations, Inc 206
  Prepared statement with attachments 264
Phillips, Bob, Chief Executive Officer, National Rural Telecommunications Cooperative 300
  Prepared statement 308
Rogers, Thomas S., Vice President, Policy Planning and Business Development, National Broadcasting Company, Inc 206
  Prepared statement 209

Page

Seethaler, Al, Chairman, Satellite Committee, NBC Television Affiliate Board, and Vice President and General Manager, KUTV, Salt Lake City, Utah ... 206
  Prepared statement ... 217
Sherman, Charles E., Chairman, Government Relations Committee, ABC Television Affiliates Association, and President and General Manager, WHOI-TV, Peoria, Illinois ... 206
  Prepared statement ... 224

WITNESSES (IN ORDER OF APPEARANCE)

NOVEMBER 19, 1987

Mark Medress ... 23
Timothy A. Boggs ... 48
James P. Mooney ... 48
Mark C. Ellison ... 96
Roy L. Bliss ... 96
Mary C. (Kazie) Metzger ... 96

JANUARY 27, 1988

Ralph Oman ... 174
Thomas S. Rogers ... 206
Al Seethaler ... 206
Charles E. Sherman ... 206
Anthony C. Malara ... 206
Brian McCauley ... 206
Preston R. Padden ... 206
Bob Bergland ... 300
Bob Phillips ... 300
Richard L. (Rick) Brown ... 300

ADDITIONAL MATERIALS

Statement of Bertram W. Carp, Vice President for Government Affairs, Turner Broadcasting System, November 19, 1987 ... 85
Memo from Mark C. Ellison to All Interested Parties re: Satellite Television Subscription Systems ... 111
Information from Kazie Metzger (H.R. 2848, Q & A) ... 145
Statement of Capital Cities/ABC, Inc., January 27, 1988 ... 232
Statement of Dr. William Duhamel, President, Duhamel Broadcasting Enterprises; on behalf of 97 television stations, with attachment, January 27, 1988 ... 339

ADDITIONAL STATEMENTS

Letter from Norman L. Hoge, General Manager, Cornhusker Public Power District, to the Honorable Peter W. Rodino, Jr., with attachment, September 3, 1987 ... 353
Letter from V.C. Dawson, President, K-SAT Broadcasting Inc., to the Honorable Robert W. Kastenmeier, with attachments, November 9, 1987 ... 355
Letter from the Honorable Jim Olin, a Representative in Congress from the State of Virginia, to Congressman Robert W. Kastenmeier, November 20, 1987 ... 376
Dear Colleague from the Honorable Jim Olin, March 16, 1988 ... 377
Letter from Bertram W. Carp, Vice President for Government Affairs, Turner Broadcasting System, Inc., to the Honorable Robert W. Kastenmeier, November 20, 1987 ... 378
Letter from Shaun M. Sheehan, Tribune Broadcasting Company, to the Honorable Robert W. Kastenmeier, with attachments, November 20, 1987 ... 380
Letter from Francis J. DeRosa, Staff Vice President and Group Counsel, General Electric Company, to the Honorable Robert W. Kastenmeier, December 23, 1987 ... 403
Letter from the Honorable John Hiler, a Representative in Congress from the State of Indiana, to the Honorable Robert W. Kastenmeier, January 26, 1988 ... 405
Prepared testimony of Chet Grochoski, Counsel, Brown, Finn & Nietert, on behalf of the Amway Corporation, January 27, 1988 ... 406

Page

Letter from Edward O. Fritts, President & CEO, National Association of Broadcasters, to the Honorable Robert W. Kastenmeier, Januuary 28, 1988 .. 415

Prepared statement of A. Philip Corvo, Executive Director, NATPE International ... 418

Letter from Leslie A. Taylor, Director, Government Affairs, GTE, to the Honorable Robert W. Kastenmeier, February 1, 1988 ... 422

Letter from William M. Barnard, Esq., Kenkel, Barnard & Edmundson, to the Honorable Robert W. Kastenmeier, February 3, 1988 ... 424

Letter from Robert Thomson, Vice President, Government Affairs, TCI Tele-Communications, Inc., to the Honorable Robert W. Kastenmeier, February 4, 1988 ... 426

Letter from Bill Noble, Satellite Country, to Congressman Robert W. Kastenmeier, March 16, 1988 ... 429

Letter from Michael E. Brunner, Executive Vice President, National Telephone Cooperative Association, to the Honorable Robert W. Kastenmeier, May 6, 1988 ... 430

Letter from the Honorable J. Roy Rowland, a Representative in Congress from the State of Georgia, to the Honorable Robert W. Kastenmeier, with attachment, April 8, 1988 ... 431

APPENDIXES

APPENDIX I.—LEGISLATIVE MATERIALS

1. H. REP. NO. 100-887, Part 1 ... 433
2. H. REP. NO. 100-887, Part 2 ... 479
3. PUB. L. NO. 100--667, Title II ... 523

APPENDIX II.—FURTHER MATERIALS BY WITNESSES

1. By Dr. Mark Medress, General Instrument Corporation ... 549
   a. A History of General Instrument Corporation ... 549
   b. VideoCipher Division, May 1987 ... 553
   c. VideoCipher II 2500R Satellite Receiver (picture and description) ... 559
   d. VideoCipher Secure Television Scrambling Systems, November 15, 1987 ... 561
   e. VideoCipher II 2500R Satellite Receiver Installation and Operation (manual) ... 578
2. By Timothy A. Boggs, Motion Picture Association of America ... 614
   a. Letter from Timothy A. Boggs, Vice President, Public Affairs, Warner Communications Inc., to the Honorable Robert W. Kastenmeier, July 7, 1988 ... 614
   b. Letter from Kathy Zebrowski, Vice President for Congressional Affairs and Special Counsel, Motion Picture Association of America, Inc., to the Honorable Robert Kastenmeier, August 12, 1988; with attached letter from Kathy Zebrowski to the Honorable Edward Markey, August 12, 1988 ... 615
3. By Mark C. Ellison, Vice President of Government Affairs and General Counsel, Satellite Broadcasting and Communications Association of America ... 619
   a. Letter from Mark C. Ellison to the Honorable Peter W. Rodino, July 29, 1988 ... 619
   b. Letter from Mark C. Ellison to the Honorable Strom Thurmond, September 30, 1988 ... 620
4. By the common carriers ... 624
   a. Letter from Robert F. Corazzini, Counsel, Southern Satellite Systems, Inc., to the Honorable Robert W. Kastenmeier, April 27, 1987; with attached letter from Selman M. Kremer, Executive Vice President, Operations, Tempo Enterprises, to Mr. Marty Lafferty, Turner Broadcasting Systems, Inc., April 22, 1987 ... 624
   b. Letter from Robert F. Corazzini, Director and Counsel, TEMPO Enterprises Inc., to the Honorable Robert Kastenmeier, with attachment, April 18, 1988, ... 627
   c. Letter from Robert F. Corazzini, Counsel, Southern Satellite Systems, Inc., to the Honorable R. Kastenmeier, July 23, 1987, with attachment .. 631
5. By Mary C. Metzger, Satellite Broadcast Networks ... 634
   a. Letter from G. Todd Hardy, Executive Vice President, Satellite Broadcast Networks, to the Honorable Robert Kastenmeier, October 23, 1987 . 634
6. By Brian McCauley, Netlink, Inc ... 636

Page

a. Letter from Brian McCauley, President, Netlink USA, to Mr. Robert Kastenmeier, Chairman, March 16, 1988 636
b. Letter from Brian McCauley, Executive Vice President and General Manager, Netlink USA, to the Honorable Robert W. Kastenmeier, October 20, 1987 637
7. By Ralph Oman, Register of Copyrights 638
a. Letter from the Honorable Ralph Oman, Register of Copyrights, to the Honorable Robert W. Kastenmeier, September 30, 1988 638
8. By Preston R. Padden, Association of Independent Television Stations, Inc... 640
a. Letter from Preston R. Padden, President, Association of Independent Television Stations, Inc., to the Honorable Robert W. Kastenmeier, February 9, 1988; with attached letter from Charles A. McFadden, Vice President and General Manager, WTVZ-TV, Norfolk, to Mr. Padden, February 4, 1988 640
b. New Independents Markets 643
c. Letter from Preston R. Padden to the Honorable Robert W. Kastenmeier, with attachments, February 2, 1988 644
9. By James B. Hedlund, Independent Television 700
a Letter from James B. Hedlund, Vice President, Government Relations, Independent Television, to Michael Remington, Esq., Subcommittee on Courts, Civil Liberties and the Administration of Justice, with attachment, September 20, 1988 700
10. By Bob Bergland, National Rural Electric Cooperative Association 702
a. Letter from Carolyn Herr Watts, Legislative Specialist, National Rural Electric Cooperative Association, to the Honorable Robert W. Kastenmeier, August 1, 1988 702
b. Letter from Carolyn Herr Watts to the Honorable Robert W. Kastenmeier, July 6, 1988 703
c. Letter from Bob Bergland, Executive Vice President, National Rural Electric Cooperative Association, to the Honorable R.W. Kastenmeier, with attachment, September 25, 1987 704
11. By National Rural Telecommunications Cooperative 705
a. Arguments to Support a Non-Discrimination Amendment to H.R. 2848—The Home Satellite Viewers Copyright Act, March 24, 1988 706
12. By Richard R. Brown, Home Satellite Television Association 707
a. Letter from George Kocian, Chairman, Home Satellite Television Association, to the Honorable Robert Kastenmeier, May 2, 1988 707
b. Letter from Richard L. Brown, Esq., and Frederick W. Finn, Esq., Brown & Finn, to the Honorable Robert Kastenmeier, September 15, 1987 708

APPENDIX III.—FURTHER PRINTED MATERIALS

1. Clarke, Arthur C., "Extra-terrestrial Relays: Can rocket stations give worldwide radio coverage?", Satellite Dealer 42 (Oct. 1985) 711
2. Long, Mark, "The Ascent of KU-BAND," Satellite Orbit 39 (November 1985) 716
3. Smith, Richard A., "Eye on the Sky: Superstation Muddle, Again," Satellite Orbit 4 (July 1987) 720
4. Radio Television Cable Satellite, Top of the Week, "Congress, in overtime, passes TVRO, children's ad bills," Broadcasting (October 24, 1988) 721
5. Harkavy, Gail, "Kastenmeier clears the set: Bill to aid satellite TV reception," Wisconsin State Journal 7C (November 16, 1988) 724
6. Editorial, "Of the Superstation Bill, the SBCA/STTI Show, and GI's Antipiracy Plan," Satellite Times 8, March 23, 1988 725
7. "Gore Bill Dies—Kastenmeier's Wins Approval," Catacable 3 (October 1988) 726

APPENDIX IV.—MISCELLANEOUS CORRESPONDENCE

1. Letter from Shirley and Chris Johnson, Committee of 435, to Congressman Robert W. Kastenmeier, with attachment, January 27, 1987 728
2. Letter from Richard (Rick) Aldrich, Zone 1 Commander, K-SAT Committee of 435, Washington State Division, K-SAT Broadcasting Inc., to the Honorable Robert W. Kastenmeier, with attachment, September 28, 1987 731
3. Letter from William J. Quinlivan, to the Honorable Robert W. Kastenmeier, January 22, 1988 734

Page
4. Letter from Joseph A. Shaffer, Vice President/General Manager, WHNS-TV, Greenville, South Carolina, to the Honorable Robert W. Kastenmeier, February 3, 1988 736
5. Letter from Charles L. Hobbs, General Manager, WPTT-TV, Pittsburgh, Pennsylvania, to the Honorable Robert W. Kastenmeier, February 5, 1988.... 737
6. Letter from LeBon G. Abercrombie, Senior Executive Vice President/General Manager, 26 KMPH, Fresno, California, to the Honorable Robert W. Kastenmeier, February 8, 1988 738
7. Letter from John A. Serrao, Vice President & General Manager, WATL Television, Atlanta, Georgia, to the Honorable Robert Kastenmeier, February 9, 1988 739
8. Letter from Delvin G. Orth and Mary J. Orth to Representative Robert Kastenmeier, January 18, 1988 740
9. Letter from John G. Backes, Committee of 435, K-SAT Broadcasting Inc., to the Honorable Robert Kastenmeier, received May 13, 1988 742
10. Letter from George Conway to Congressman Robert Kastenmeier, May 17, 1988 743
11. Letter from George Leedy, Satellite Sales Manager, Western Division, Bluefield Distributing Company, to Chairman Robert Kastenmeier, September 12, 1988 744

SATELLITE HOME VIEWER COPYRIGHT ACT

THURSDAY, NOVEMBER 19, 1987

House of Representatives,
Subcommittee on Courts, Civil Liberties, and the
Administration of Justice,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2237, Rayburn House Office Building, Honorable Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier, Synar, Boucher, Cardin, Moorhead, Lungren, DeWine, Coble, and Slaughter.

Staff present: Michael J. Remington, chief counsel; Thomas E. Mooney, associate counsel; and Audrey K. Marcus, clerk.

Mr. **Kastenmeier**. The subcommittee will come to order.

The gentleman from Oklahoma, Mr. Synar.

Mr. **Synar**. Mr. Chairman, I would ask unanimous consent that the subcommittee permit the meeting to be covered in whole or in part, by television broadcast, radio broadcast, and/or still photography pursuant to Rule 5 of the Committee Rules.

Mr. **Kastenmeier**. Without objection, that request is agreed to.

This morning, the subcommittee has convened in order to examine an issue raised by the collision of technological change and copyright law. The subject of the debate is contained in H.R. 2848, the Satellite Home Viewer Copyright Act of 1987 which, with the unanimous consent of the subcommittee, I would request be reprinted in the hearing record.

I hear no objection, so that will be done.

[The information of the subcommittee follows:]

I

100TH CONGRESS
1ST SESSION

H. R. 2848

To amend title 17, United States Code, relating to copyrights, to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station owners.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 1987

Mr. KASTENMEIER (for himself, Mr. SYNAR, Mr. BOUCHER, Mr. MOORHEAD, Mr. HUGHES, and Mr. GARCIA) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend title 17, United States Code, relating to copyrights, to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station owners.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Satellite Home Viewer Copyright Act of 1987".

SEC. 2. AMENDMENTS TO TITLE 17, UNITED STATES CODE.

Title 17, United States Code, is amended as follows:

(1) Section 111 is amended—

11

(A) in subsection (a)—

(i) in clause (3) by striking "or" at the end;

(ii) by redesignating clause (4) as clause (5); and

(iii) by inserting the following after clause (3):

"(4) the secondary transmission is made by a satellite carrier for private viewing pursuant to a compulsory license under section 119; or"; and

(B) in subsection (d)(2)(A) by inserting before "Such statement" the following:

"In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private viewing pursuant to section 119."

(2) Chapter 1 of title 17, United States Code, is amended by adding at the end the following new section:

"§ 119. Limitations on exclusive rights: Secondary transmissions of superstations for private viewing

"(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

"(1) Subject to the provisions of clauses (2), (3), and (4) of this subsection, secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing if the secondary transmission is made by a satellite carrier to the public for private viewing, and the carrier makes a direct charge for such retransmission service to each subscriber receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private viewing.

"(2) Notwithstanding the provisions of clause (1) of this subsection, the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b).

"(3) Notwithstanding the provisions of clause (1) of this subsection, the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

"(4) Notwithstanding the provisions of clause (1) of this subsection, the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier discriminates against a distributor in a manner which violates the Communications Act of 1934 or rules issued by the Federal Communications Commission with respect to discrimination.

"(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE VIEWING.—

"(1) A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal, prescribe by regulation—

"(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations whose signals were transmitted, at any time during that period, to subscribers for private viewing as described in subsection (a)(1), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal, from time to time prescribe by regulation; and

"(B) a royalty fee for that 6-month period, computed by multiplying the number of subscribers receiving each secondary transmission during each calendar month by 12 cents.

"(2) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under clause (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title.

"(3) The royalty fees deposited under clause (2) shall, in accordance with the procedures provided by clause (4), be distributed to those copyright owners whose works were included in a secondary transmission for private viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Tribunal under clause (4).

"(4) The royalty fees deposited under clause (2) shall be distributed in accordance with the following procedures:

"(A) During the month of July in each year, each person claiming to be entitled to compulsory license fees for secondary transmissions for private viewing shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. Notwithstanding any provision of the antitrust laws, for purposes of this clause any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

"(B) After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, the Tribunal shall, after deducting reasonable administrative costs under this clause, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Tribunal finds the existence of a controversy, the Tribunal shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

"(C) During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

"(c) Determination of Royalty Fees.—

"(1) Methods for determining royalty fees.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective until December 31, 1991, unless a royalty fee is established under clause (2) or (3) of this subsection. After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in clause (2) of this subsection or in accordance with the compulsory arbitration procedure specified in clauses (3) and (4) of this subsection.

"(2) Fee set by voluntary negotiation.—

"(A) On or before July 1, 1990, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B) of this section.

"(B) Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Notwithstanding any provision of the antitrust laws, any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

"(C) Voluntary agreements negotiated at any time in accordance with this clause shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within thirty days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

"(D) The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this clause shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1995.

"(3) FEE SET BY COMPULSORY ARBITRATION.—

"(A) On or before December 31, 1990, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) of this section by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with clause (2) of this subsection. Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select.

"(B) Not later than ten days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by copyright owners who claim to be entitled to royalty fees under subsection (b)(4) of this section and who are not party to a voluntary agreement filed with the Copyright Office in accordance with clause (2) of this subsection, and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement. The two arbitrators so selected shall, within ten days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators. If either group fails to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fails to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively. The arbitrators selected under this paragraph shall constitute an Arbitration Panel.

"(C) The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record.

Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4) of this section, any satellite carrier, and any distributor, who is not party to a voluntary agreement filed with the Copyright Office in accordance with clause (2) of this subsection, may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

"(D) In determining royalty fees under this clause, the Arbitration Panel shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with clause (2) of this subsection, and the last fee proposed by the parties, before proceedings under this clause, for the secondary transmission of superstations for private viewing. The fee shall also be calculated to achieve the following objectives:

"(i) To maximize the availability of creative works to the public.

"(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

"(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

"(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

"(E) Not later than sixty days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee. Such report shall be accompanied by the written record, and shall set forth the facts that the Board found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in paragraph (D) of this clause.

"(F) Within 60 days after receiving the report of the Arbitration Panel under paragraph (E) of this clause, the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in paragraph (D) of this clause. If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in paragraph (D) of this clause, setting the royalty fee under this clause. The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence). The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate. The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying.

"(G) The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this clause, or established by any order issued under paragraph (F) of this clause, shall become effective on the date when the decision of the Tribunal is published in the Federal Register under paragraph (F) of this clause, and shall remain in effect until modified in accordance with clause (4) of this subsection, or until December 31, 1995.

"(H) The royalty fee adopted or ordered under paragraph (F) of this clause shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under clause (2) of this subsection.

"(4) JUDICIAL REVIEW.—Any decision of the Copyright Royalty Tribunal under clause (3) of this subsection with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the publication of the decision in the Federal Register. The pendency of an appeal under this clause shall not relieve satellite carriers of the obligation under subsection (b)(1) of this section to deposit the statement of account and royalty fees specified in that subsection. The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in clause (3)(D) of this subsection, that the Arbitration Panel or the Tribunal acted in an arbitrary manner. If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B) of this section, and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with clause (3) of this subsection.

"(d) **Definitions.**—As used in this section—

"(1) **Antitrust laws.**—The term 'antitrust laws' has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

"(2) Distributor.—The term 'distributor' means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private viewing or indirectly through other program distribution entities.

"(3) Independent station.—The term 'independent station' has the meaning given that term in section 111(f) of this title.

"(4) Primary transmission.—The term 'primary transmission' has the meaning given that term in section 111(f) of this title.

"(5) Private viewing.—The term 'private viewing' means the viewing, for private use in an individual's dwelling unit by means of equipment which is operated by such individual, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

"(6) Satellite carrier.—The term 'satellite carrier' means a common carrier that is licensed by the Federal Communications Commission to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a transponder on a satellite in order to provide such point-to-multipoint distribution.

"(7) SECONDARY TRANSMISSION.—The term 'secondary transmission' has the meaning given that term in section 111(f) of this title.

"(8) SUBSCRIBER.—The term 'subscriber' means an individual who receives a secondary transmission service for private viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

"(9) SUPERSTATION.—The term 'superstation' means a television broadcast station licensed by the Federal Communications Commission that—

"(A) was secondarily transmitted by a satellite carrier for nationwide distribution on June 1, 1987, or

"(B) is secondarily transmitted by a satellite carrier and is then secondarily transmitted by cable systems serving, in the aggregate, not less than 10 percent of all cable television subscribers, as reflected in the most current statements of account deposited by cable systems with the Register of Copyrights in accordance with section 111(d)(2)(A) of this title.".

(3) Section 801(b)(3) of title 17, United States Code, is amended by striking "and 116" and inserting ", 116, and 119(b)".

(4) Section 804(d) of title 17, United States Code, is amended by striking "sections 111 or 116" and inserting "section 111, 116, or 119".

(5) The table of sections for chapter 1 of title 17, United States Code, is amended by adding at the end the following new item:

"119. Limitations on exclusive rights: Secondary transmissions of superstations for private viewing.".

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect on January 1, 1988, except that the authority of the Copyright Royalty Tribunal to set rates pursuant to the amendments made by this Act takes effect upon the date of the enactment of this Act.

SEC. 4. TERMINATION.

This Act and the amendments made by this Act cease to be effective on December 31, 1995.

○

Mr. KASTENMEIER. What to do about earth stations and copyright is not exactly a new issue for the subcommittee. We started our inquiry two years ago during the 99th Congress, held two days of hearings, and ultimately moved a bill through the full Judiciary Committee. The bill before us today is virtually the same as H.R. 5572, the measure approved last year by the full committee.

This morning we will receive testimony first about satellite dish technology, including scrambling and descrambling. Then we will hear from the Motion Picture Association of America and the National Cable Television Association. And finally, we will receive statements from a panel of proponents, all of whom support the proposed legislation.

At a second day of hearings, which will occur in the near future, several important perspectives will be represented, including views from broadcasters, both networks and independent television, earth station owners and consumers, Rural Electric Cooperatives, the Copyright Office, and the Administration.

I would like briefly to identify the specific copyright problem that is pending before the subcommittee and then add a few general observations about the proposed legislative solution that bears my name and that of several others of the members of the subcommittee, including Mr. Synar, Mr. Moorhead, and Mr. Boucher.

It is highly doubtful whether common carriers may scramble and sell when they retransmit copyrighted signals to earth station owners. Admittedly, this view presents carriers with a Hobson's Choice. Either do not scramble, raising the potential ire of the cable television and program supplier interests. Or scramble and do not sell to earth station owners, losing a potential market.

The Registrar of Copyrights argues persuasively that a combination of activities by carriers, scrambling of signals, licensing of descrambling devices, and the subsequent sale of descrambled signals to earth station households, falls outside the copyright exemption granted by statute to passive carriers for the secondary transmission of copyrighted works.

Let me share some more general observations. This bill is a compromise which balances the rights of copyright proprietors with the interests of consumers while paying careful heed so as to not conflict with provisions in copyright law pertaining to other distribution entities.

The subcommittee worked very hard the last Congress with representatives of the earth station industry, motion picture industry, common carriers, superstations, in order to arrive at a solution. The solution, as I stated in my floor remarks for the initial bill that I introduced, may not be perfect. I look forward to working not only with individuals and organizations which appear this morning, but also with others who will participate in the second day of hearings.

I am optimistic about achieving a legislative success. With the requisite degree of flexibility among interested parties, the subcommittee can participate in an exciting legislative project, a project which will bring new technology within the mainstream of our system. The net result will be more communications to more individuals in more regions, especially the people in areas that are generally unserved today.

In today's society, technological changes come at such a blinding rate that we easily forget that the movie industry is only 70 years old. The television industry is reaching its fourth decade. In comparison, earth stations are mere infants.

Although the science fiction writer Arthur Clarke conceptualized a satellite telecommunication revolution almost 40 years ago, Early Bird, the first operational commercial communication satellite was launched a mere 20 years ago and much has occurred since that time.

In order to write laws dealing with the new technologies, Congress should have an understanding of the technology. I would like therefore to call forward the subcommittee's first witness, who will teach us a science course on satellite earth stations.

Before I introduce him, I will ask whether my colleagues, Mr. Moorhead, and Mr. Synar, may have opening statements.

Mr. MOORHEAD. I have a short opening statement, Mr. Chairman.

Mr. KASTENMEIER. The gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Mr. Chairman, I would like to commend you and the gentleman from Oklahoma, Mr. Synar, for the effort in drafting this legislation and scheduling this hearing. The problem which we seek to correct by this legislation may be technical in nature, but could be a serious problem to industry and to the consumer, if not corrected.

Satellite resale carriers are considered passive, not by a decision of this committee in the 1976 act, but rather by a court decision interpreting the 1976 act. When Congress enacted the Copyright Act of 1976, the FCC had not yet authorized the creation of satellite resale carriers. Congress neither approved, nor did it even contemplate, this kind of activity, granting the exemption to passive carriers like telephone companies.

I am looking forward to the testimony this morning. There are questions that arise from the creation of a new compulsory license which H.R. 2848 creates and I realize that this bill is not without opposition. Hopefully this morning the testimony will clarify some of the problems that we may face with this legislation.

Mr. KASTENMEIER. I'd like to recognize the gentleman from Oklahoma, Mr. Synar, a co-author of the bill.

Mr. SYNAR. Thank you, Bob, and first of all, let me thank you for your outstanding leadership in this area. We have worked closely over the last year and a half on this legislation and I think that today's hearing will really lead us down the path, hopefully, for a markup early next year or maybe even later this year.

The purpose of this bill, as you clearly stated, is to ensure that satellite programming remains available to the four million homes that own satellite dishes. The legal uncertainty that surrounds the current sale of superstation signals to backyard dish owners threatens, I believe, to impede the development of this new industry.

One satellite carrier, SBN, currently is being sued for the transmission of broadcast signals. Unless Congress acts, the future of the TVRO industry hinges on the outcome of that lawsuit.

Very frankly that, to me, is not the role that is suited for the courts. It is our responsibility, as Congress, to write the copyright law, not the courts. Where that law is ambiguous, we should act to clarify it.

This bill is simply an attempt to balance the interest of the dish owners, the satellite carriers and the copyright holders. It is not an ideal bill from the perspective of any of these groups. But that is the nature, very frankly, of copyright law.

I believe it fairly balances the interest of everyone involved. It is not to suggest that improvements cannot be made. We should attempt to accommodate, as much as possible, constructive suggestions that I expect will be made in today's hearing, and I hope to work with those groups to do that.

There are a number of issues that I would suggest that we consider as we attempt to improve this bill. Without discussing them in detail, they include the arbitration requirement, certain provisions of the grandfather clause, retransmission of the network signals into white areas, and the copyright rate itself.

Our goal in discussing these provisions should be to expand the support for this legislation, and I want to stress that. The provisions and the discussions of those provisions should be used to expand the support of that legislation.

Mr. Chairman, I appreciate your attention to the needs of the backyard dish owners and I look forward to the hearing today, as you do.

Mr. KASTENMEIER. I thank my colleague for his excellent statement and acknowledge the presence also of a co-sponsor of the bill, the gentleman from Virginia, Mr. Boucher.

Now our first witness today, as I indicated, will deal with the science of satellite earth stations to some extent. Dr. Mark Medress is Vice President for New Business Opportunities, VideoCipher Division, General Instrument Corporation. Dr. Medress will conduct a live demonstration on how satellite communications technology works, including the technologies of scrambling and descrambling.

Dr. Medress, we're delighted to have you here, and you may proceed as you wish. You do have a statement which we have before us. It is a brief statement so, as far as I'm concerned, you can either proceed from that or, if you wish, offer that and present your statement in any other fashion.

I note, for purposes of clarity in the record, there are two monitors here and my understanding is that they have the same visual content. One is facing our audience today and the other is facing the committee.

Dr. Medress.

TESTIMONY OF MARK MEDRESS, VICE PRESIDENT FOR NEW BUSINESS OPPORTUNITIES, VIDEOCIPHER DIVISION, GENERAL INSTRUMENT CORPORATION

Dr. MEDRESS. Thank you very much, Mr. Chairman.

I am very happy to be here to represent General Instrument Corporation. As you noted, I have prepared a short written testimony, which we would like to have included in the proceedings of this committee, if possible and I would like to proceed to a live demonstration and an explanation of scrambling technology that plays a role in these proceedings.

Mr. **Kastenmeier**. Without objection, the materials and diagrams and the statement, also will be accepted and made part of the record. You may continue.

Dr. **Medress**. Thank you very much.

Before I begin the demonstration, I want to mention that General Instruments Corporation does support this legislation. We agree with the statements of the committee members, that it is important for TVRO owners, home dish owners, to have access that is clearly provided for under the copyright legislation.

I would like to begin, if I could, with this chart, which provides some of the essential elements of the satellite communication system and the scrambling components that are in use today. Of course, the major element is the satellite itself. As you correctly stated, satellites are relatively new technology. They were launched in the late sixties, initially for military communications and then, fairly quickly thereafter, for commercial communication situations.

These satellites that we are talking about today are what are called synchronous satellites. They stay in a relatively fixed position over the earth so that, to receive their signal, you can construct a dish and point it at the satellite. Since the satellite does not move, the dish does not have to move to track the satellite itself.

In the middle 1970's companies that provide programming to cable systems began to use satellites to distribute their signals to the cable systems and that was really a result of the cost effectiveness of this technology.

Since the satellite system receives a transmission from the ground and repeats it, broadcasting it over the entire country, all of the cable operators located around the country are able to receive that signal and it eliminates the need to use microwave transmission or to move tapes back and forth.

Mr. **Kastenmeier**. May I interrupt only to say that while the audience is not able to see the chart, the audience does have access to the statement. As I understand, there are copies that members in the audience have. Dr. Medress is proceeding from the last illustration in the statement, so you may be able to follow his presentation.

Dr. **Medress**. Thank you very much.

In the mid-1970s, the cable programmers began to use satellite technology to distribute their programming to cable companies. At that time, satellite dishes were quite expensive. Of course, the cable companies could afford to install these dishes because they were supporting their business to the cable subscribers on their system.

In the late 1970s, the first home satellite dishes appeared. I think the Neiman-Marcus catalog had the first one and it was quite a nice toy and quite expensive, also, at that time. But in the early 1980s, the situation began to change.

First of all, in the early 1980s almost all of the entertainment programmers were transmitting their signals to cable companies by satellite. So satellite communications became the pervasive technology for communication with cable systems. The other major change was that the cost of home satellite dishes began to drop rapidly.

This combination of the satellite distribution of all major entertainment programming and the lower cost of home satellite dishes resulted in a boom of satellite dish sales and installations. As I think we know, today there are approximately two million satellite dishes installed at people's homes around the country, and that number continues to increase.

Another major event occurred in January of 1983, when Home Box Office, one of the major premium or movie programmers that distributes by satellite to cable operators, provided a contract to the VideoCipher Division that I represent to develop a satellite scrambling system for their signal distribution.

Several events rapidly followed that. In November of 1984 Showtime and The Movie Channel, another company with premium program services, gave us a contract for the same system. In the fall of 1985 CNN, Headline News, ESPN the Sports Network, and a number of other basic and premium program providers came to VideoCipher for scrambling technology for distributing their satellite signals.

Let me describe quickly how the scrambling system works. First of all, I want to point out two facts about scrambling. The reason these programmers selected scrambling and VideoCipher II in particular, is that first of all, scrambling system allows authorized reception by both cable operators and home TVRO owners. I want to stress the second point because a great deal of time and effort went into the development of the scrambling system to provide proper reception and support by home dish owners.

That was the first point, the authorized reception.

The second point, which often is missed in this discussion, is that the scrambling system actually improves the signal that is received by home dish owners. It improves the signal by providing clearer and more stable video. It provides digital stereo audio, very much like compact discs, which incidentally became very popular during this same time frame.

And in addition, there are a number of features that home dish owners are able to access that enhance the value of the service, and we will demonstrate those this morning. These include things like parental control, the ability to lock out programs on a program by program basis; the ability to receive text services, the title of the current program, the title of the next program, electronic mail messages and things of that sort.

Another feature that we designed in the system from the beginning, primarily to meet the needs of the sports programers, like ESPN, is the ability of the system to black out regions in the country of home reception and cable reception to satisfy program distribution requirements that they have in their contracts.

So there is a blackout capability that is part of the system as well.

Let us talk for a minute, before we start the demonstration, about the elements of the system. There are business computers that sell programming to home dish owners. These business computers take orders over the telephone, they create billing records, and they send messages to something called the DBS Authorization Center.

The function of this center is to process those messages and actually turn on individual descramblers for the programming that's been ordered. There are approximately 12 of these business systems that are in use today, all of which connect to the DBS Authorization Center which General Instrument operates in San Diego, California, at cost, for the satellite programming industry. We were requested to do this by the industry, to perform this collating function.

The center collects all of the requests for programming and creates a composite or combined stream of messages to control all of the home descramblers. These messages are then distributed to all of the transmission locations of the programming services, where they are combined in the scrambled signal of each programmer.

This is a very important aspect of the system design and it is especially tailored for the home TVRO market because with all of the authorization messages contained on every scrambled channel, the home dish owner can watch any scrambled channel he or she desires and still receive messages that are needed for the proper operation of their descrambler.

At each transmission location, or uplink, the programmers have a scrambling system for each channel that they are sending by satellite and a computer to control that channel. The signals go up to the satellite, of course. They then come down where they are received by both cable and TVRO satellite dishes.

At the cable system, the cable operator has one descrambler for each scrambled channel that's carried by the cable system. Typically, a cable system will have 10 or 15 descramblers because that's the average number of scrambled channels the cable system receives and distributes.

The descrambler, when it is properly authorized for a particular channel, provides the clear video and audio which the cable operator can then distribute over their cable system in whatever manner they choose, in the clear or by rescrambling with another cable scrambling system.

There are approximately 170,000 cable descramblers installed to receive approximately 44 scrambled channels to date.

The bottom half of this chart shows the satellite dish descrambling equipment. There are two basic kinds of home dish descramblers. There is what we call the stand alone descrambler, it has the model number 2100E, which is used by people who already have satellite receiving equipment as an add on, so that they can subscribe to and receive scrambled programming. General Instrument builds this stand alone descrambler.

Then there are a large number of satellite receivers that include the descrambling circuitry. We call these integrated receiver descramblers. You see an example of one here. This happens to be a General Instrument integrated receiver descrambler. This is identical to the unit that is sitting on the table against the wall, which is connected to a satellite dish outside of the building. It is that unit that we will actually be using for the demonstration.

There are approximately 20 companies that have licenses with General Instrument to build competitive satellite receiver descramblers for the home market. This is a very active area right now.

So there are about 170,000 commercial descramblers with cable companies, approximately 270,000 home descramblers have been purchased and authorized for service by home dish owners. That number is growing at roughly the rate of 20,000 or 25,000 a month.

So that is a quick snap shot of the current status of the system. One of the important aspects of the system design is that because all of the programmers who have either scrambled or announced intentions to scramble are using the VideoCipher II system, and because they are all coordinated through the DBS Authorization Center in California, the home dish owner only needs to buy a single descrambler or integrated receiver descrambler to receive any and all scrambled programs that that dish owner desires.

There has been a lot of confusion about that point in the past, also, but that is a very important point for the home dish industry.

What I would like to do next is to show you a demonstration of this system. As I mentioned, we have a satellite receiver connected to a satellite dish outside. We have that dish pointed at one of the popular satellites. It is called Galaxy I and it carriers much of the programming that is on cable systems. There are roughly 10 or 12 satellites that have cable type programming on them. We selected this one for the demonstration this morning.

I am going to turn on the receiver. We already have the satellite receiver descrambler authorized for service to save time, this morning. This is an example of a scrambled channel that we are not authorized to receive. We didn't sign up for this one.

Let me move ahead to another channel. You probably all recognize this. This is C-SPAN and it is in the clear. It illustrates that the scrambling system, when it tunes to a clear channel, automatically passes through the clear channel so the homeowner does not need to do anything to receive either clear or scrambled programming.

We go to the next channel, which is The Movie Channel West. This is the west coast feed of The Movie Channel and movie service. You can see that when we changed channels, we got the title of the channel, the title of the movie, its rating and the time left in the movie. These are some of the text features that the scrambling system offers to home TVRO owners that are not available with clear transmission.

Let us try another channel. This is channel 15 and it is WOR, one of the superstations in consideration this morning. WOR was one of the first channels to scramble. Initially they scrambled only to cable systems. Then, as they became more comfortable with the procedures for distributing to home TVRO owners, began to provide signals to home TVRO owners.

The next channel is channel 16 and this is another one of the scrambled channels. This is also one we are not authorized for.

This is channel 17, which is a clear channel. Channel 18 is superstation TBS. This is, of course, another one of the superstations that is of concern to the committee this morning.

What I would like to do is go ahead to channel 23, which is Home Box Office. They are currently showing the movie American Flyers. It is rated PG-13 and it has about an hour and a half left.

I have a button on my descrambling control that allows me to call up the title of the next program, Florida Straits. It will start in an hour and 26 minutes. So I have access to what I am watching and what the next program is that will be transmitted.

There are some other information that's available on the system. There is a menu of some choices that I can call up. And if I go to the first choice, screen number one, I have some very helpful information when I'm installing my descrambler.

I have, first of all, the public identity or the address number of my descrambler, and I have to give this to the programmer or programmers that I'm buying programming from because that enables the computer system we describe to send the proper encrypted authorization message over the satellite to this descrambler to turn it on. So there is the unique identity.

There is also a measure of how good the signal is, that the descrambling circuitry is actually seeing. That helps a homeowner to ensure that his dish is working properly, that the electronics on his dish and the satellite receiver are giving the right kind of signal to the descrambling circuit.

The third line skows that the descrambler has been properly authorized by the DBS Center. When we first installed this yesterday, and I called this screen up, I was able to see that I had a good signal, but of course I got a message that says needs authorization because I hadn't called anyone to order programming. After I did that, this message changed and now I know that everything is fine.

You can also see that the location is set in this descrambler. We accomplished that by sending over the satellite the location of the descrambler in the United States so that if it tunes to a sporting event, for example, that has blackouts in effect, the descrambler will automatically compute whether it's inside a blackout region or not. That is a very nice capability.

If we go back to the set up screen, I would like to go back to page number two, to point out a couple of other features. Remember we said this is a digital stereo system, and if the programming is in stereo, of course, that uses both audio channels.

But if it is a monaural transmission, which many are, the programmer has the option to send, for example, english on one channel and spanish on a second channel. And I, the TVRO owner, can tell my descrambler if I want to listen to the primary audio or the alternate audio. So I have dual language capability in the system. I will set that back to the primary mode.

There is also an electronic mail capability in the system, so that text messages can be delivered to individual descramblers that are of interest to that descrambler owner. Right now, I have enabled the on screen character that reminds me that a message has come. But I can turn that character off, to disable it, so if I want to video tape a movie I will not have my video tape interrupted by a character that tells me a message has arrived, but of course I still get my messages.

There is one other feature that is quite interesting. It is the rating ceiling. If I go to page three, I can show you that I have set my descrambler to allow the viewing of programs that are G, PG, or PG-13. The current program is rated PG-13, so there is no problem.

This is a feature that allows me, for example, to leave home at night and be confident that my children will not watch programs that I really would prefer they not. Since I know the password, I can change that. Let me just show you how this works.

I am going to turn up the volume just a little so you can hear it. Now, in order to change the rating, I have to enter the correct password. If I do not know the password, or guess it, it will not let me do anything. If I do know the correct password, then it gives me access to changing the parental control.

I can increase that, for example, to R or X. I can decrease it, and if I go below PG-13, this program will stop. You notice how the audio stopped and I got a message saying the program was locked out.

Now, if I go off channel and then come back, I will automatically get a message that tells me what the program is, how it is rated, tells me it is locked out and it gives me specific instructions. I am told to press the enter key. I am then given a screen that asks me to enter my rating password.

If I know that correctly, I am then allowed to change the rating, and now the audio will turn back on and I can go back and watch the program.

The last point that I want to make is that the blackout capability that we built into the system, as I mentioned earlier, is designed to support sporting type events. It allows a programmer to specify up to 32 circular regions in the country that descramblers would be blacked out in. That is more than adequate for sporting events.

It was not really intended for controlling let us say white area access or some of the syndicated exclusivity issues that have come up in front of this committee.

I thank you very much for your attention. I hope this has been useful and I would be happy to answer questions, if there are any.

[The statement of Dr. Medress follows:]

Statement of

DR. MARK F. MEDRESS

GENERAL INSTRUMENT CORPORATION

before the

Subcommittee on Courts, Civil Liberties,
and the Administration of Justice

Committee on the Judiciary

U. S. House of Representatives

November 19, 1987

Mister Chairman and members of the subcommittee, my name is Mark Medress and I am Vice President, New Business Development of the VideoCipher Division of General Instrument Corporation ("GIC"). I want to thank you for this opportunity to appear before you to demonstrate the VideoCipher(R) II scrambling system.

I am here as a technical witness in order to provide the subcommittee with some background on satellite television scrambling, the VideoCipher(R) II system, and its technical capabilities. I am not here as a policy witness -- I intend to defer to the policy witnesses lined up for the next panel on questions of that sort. We at General Instrument Corporation are proud of the VC II system and of the fact that it provides a mechanism by which programmers and ultimately copyright owners can be compensated.

The VideoCipher(R) II system has been chosen by over 40 programmers to secure their satellite feeds. More than 44 services are now fully scrambled. Programmers that are currently completing their scrambling rollouts include The Disney Channel, MTV, VH-1, Nickelodeon, Lifetime, and American Movie Classics. As of the end of October, about 268,000 consumer descramblers have been authorized at the DBS Authorization Center. Twenty receiver manufacturers have been licensed by the company to produce integrated receiver/descramblers that incorporate the VideoCipher[R] II descrambling module, and we anticipate that others will soon be licensed. The past year has been one of growth and success for this program.

The VC II system incorporates computers at the programmer's facilities, a central control computer that we call the DBS Authorization Center, and decoders at homes, cable TV head-ends and other locations.

When a consumer wants to subscribe to a programming service, the consumer calls the programmer, usually on an 800 telephone number. The programmer takes down the relevant information, including the subscriber's address and the serial number or "unit address" of the decoder. The programmer enters that information into his computer, for billing purposes, and sends a data message to the DBS Authorization Center, with instructions to authorize the subscriber's decoder.

The DBS Authorization Center automatically enters the authorization information into a data stream known as the authorization channel. This encrypted channel contains the authorization information for every subscriber and all TVRO program services. The DBS Authorization Center sends this authorization channel to every programmer, and at each uplink it becomes part of the digital control information in the scrambled signal.

Each decoder listens to the authorization channel, waiting for its unit address. When it hears its unit address, the decoder learns which programs it is authorized to descramble in the following month. The authorization channel carries the authorization information numerous times during a month for each decoder, so that there is a high degree of likelihood that a decoder will receive the appropriate authorization information. For a new subscriber, the authorization information is sent on the authorization channel within a few minutes of the subscriber's telephone call to the programmer.

The VideoCipher® II system has a number of technical capabilities that are built into it. One such capability allows a programmer to "black out" customers in specified areas.

The blackout capability in VideoCipher® II was intended to accommodate sporting events. If a college football game were being played in Baltimore, for example, the programmer could black out dish owners in the area surrounding that city. But the design assumption was that a program would need to be blacked out in at most only a few areas. For that reason, the maximum number of areas where a program can be blacked out in the VideoCipher(R) II system is 32 areas.

The programmer defines each area as a circle by specifying the center coordinates and the radius. Our system will black out all subscribers that live in zip codes whose centers are within this circle.

I want to explain to you why we do not recommend that this black-out capability be used to implement syndicated exclusivity.

In satellite television, syndicated exclusivity would require that a subscriber's descrambler be de-authorized when the superstation is showing syndicated programming that is carried by a local station.

It is the 32 city limitation that makes the VideoCipher(R) II inappropriate for syndicated exclusivity. If a syndicated program were being carried in 32 cities or less, then a satellite programmer could use the VideoCipher(R) II blackout capability to implement the blackout. If the program were carried in more cities than 32, as seems to be the case with the most popular syndicated programs, the VideoCipher(R) II system would not be appropriate.

According to recent advertising and published report, Paramount Pictures' "Star Trek: The Next Generation" is carried in 209 markets and six other Paramount programs are carried in 153 or more markets each. Warner Bros.' "Growing Pains" is carried in 105 markets. Disney's "Duck Tails," an animated children's series, is carried on 153 stations. The "Sally Jessy Raphael" show is syndicated to about 100 stations. "The Christian Science Monitor Reports" is carried on 95 stations. Lorimar's "Mama's Family" is carried in 151 markets. The game show "Win, Lose or Draw" is carried on 122 stations.

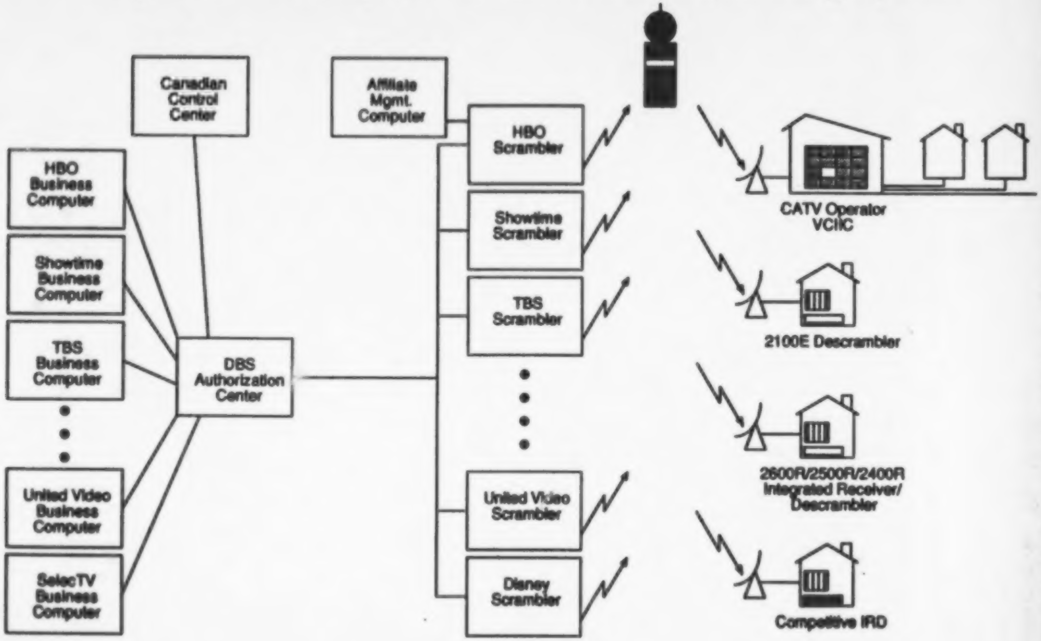
VideoCipher(R) II blackout capabilities are currently based on the first three digits of zip codes. Zip codes are irregular in shape, and do not conform to the circular TV coverage patterns that are relevant to syndicated exclusivity. Our system will black out all subscribers that live in zip codes whose centers are within a specified distance from some center coordinate. In other words, it is the location of the center of the zip code rather than the actual location of the subscriber within the zip code that determines whether the subscriber is blacked out. In places where the zip code boundaries do not conform to TV coverage patterns, the programmer would have to black out all subscribers in the zip code or none, and could therefore black out too many or too few.

Even if the VideoCipher(R) II system had the technical capability to implement syndicated exclusivity, there is an important distinction between syndicated exclusivity on satellite television and on cable TV. On a cable TV system, the cable TV operator can employ switching to substitute another program for the syndicated program that is blacked out. There is no such substitution possible with satellite television. The subscriber is simply left with a black screen, in spite of the fact that he faithfully pays his subscription fees each month.

In summary, the VideoCipher(R) II has become the de facto standard for satellite television scrambling. It does its intended job very well. In particular, the blackout capability of the VideoCipher(R) II system works well for sporting events. It was not designed for syndicated exclusivity, and I would not recommend it for that purpose.

That concludes my statement. I appreciate the opportunity to appear before you today, and I would be happy to answer any questions you might have.

Integrated VideoCipher® II CATV/DBS Scrambling System



Canadian Control Center

Affiliate Mgmt. Computer

HBO Business Computer

Showtime Business Computer

TBS Business Computer

United Video Business Computer

SelecTV Business Computer

DBS Authorization Center

HBO Scrambler

Showtime Scrambler

TBS Scrambler

United Video Scrambler

Disney Scrambler

CATV Operator VCIIC

2100E Descrambler

2600R/2500R/2400R Integrated Receiver/ Descrambler

Competitive IRD

GENERAL INSTRUMENT

Mr. **Kastenmeier**. Thank you very much for that very impressive presentation, Dr. Medress.

Theoretically, looking at the future, could you ever, for example, command immediate colorization of a black and white film?

[Laughter.]

Mr. **Kastenmeier**. No, that is potentially, five or ten years hence, I suppose that would be theoretically part of the technology.

Dr. **Medress**. I do not think it would be part of the scrambling technology, but things are happening so quickly that it is hard to predict these things.

Mr. **Kastenmeier**. One of the concerns that a lot of dish owners must have had and may still have is that coping with scrambling might mean that they would have to have a number of devices, of descramblers, not just a single one, depending on what sort of programming they incrementally would want to access themselves to.

But you have shown us a unitary system that presumably is all that is necessary for any and all descrambling that potentially would be required for a person with an earth station and your system?

Dr. **Medress**. The equipment that I have shown you will descramble all of the channels, all of the programming services that are scrambled with VideoCipher II technology. The fortunate thing is that all of the entertainment programmers to date have chosen the VideoCipher II system to scramble their signals. I am sure one reason that motivated that choice is that they are aware of the fact that if you look at the economics of the marketplace, a consumer wants to buy only one descrambling circuit in order to receive all the programming that he is interested.

So the answer is that since all the programming is scrambled with VideoCipher II, only one VideoCipher II descrambler, as you see here, is required.

The other advance in technology that improves things for the home TVRO owner is that only a few years ago a home TVRO owner needed four boxes like this. One was a satellite receiver. Another was a separate descrambler. A third was the ability to control the antenna and point it in different directions.

So there were three or four devices like this. Now, all of this capability has been integrated into one device that is as you see it and other manufacturers build similar equipment. So it simplifies things and reduces the cost for the homeowner.

Mr. **Kastenmeier**. Does the scrambling system itself, your system, VideoCipher II, would it tell a dish owner on call what program costs might be? Does it provide any marketing information about other packages that might be available to the dish owner, in terms of cost per program or per year or per month, or so forth?

Dr. **Medress**. As a matter of fact, it does. The system, as I mentioned, has the ability to deliver text information to descramblers. One of these abilities allows a programmer to send a text message to all of the TVRO owners in a certain category.

For example, HBO can send a message to all satellite TVRO owners who have not subscribed to HBO. When they turn to the HBO channel, they automatically receive a message on their screen that tells them what number to call if they want to order HBO and how to get additional information.

The other programmers are doing very similar things and, in addition, the programmers can send an audio signal along with their scrambled signal, so that if the dish owner has no descrambler at all and tunes to a scrambled channel he receives an audio message in the clear giving him information about the service, how to buy it, and things of that sort.

As the programmers are moving toward more packaging, this information becomes more comprehensive because it gives more advice about how to get more programming.

Mr. **Kastenmeier**. Could you very briefly give us an analysis, and it could be a very long answer, but in general as briefly as you can, the universe out there for TVRO with respect to what is unscrambled, what is scrambled and served by VideoCipher II and what is scrambled and served by other types of devices?

Dr. **Medress**. I will certainly try. There are, depending on whose numbers you look at, between 120 and 200 channels distributed by satellite that home dish owners might be interested in watching. Approximately 44 of them are scrambled today with VideoCipher II equipment and available to TVRO owners. These are all of the major cable entertainment type channels.

As I said, all of the programmers that have announced intentions to scramble, who have not already done so, have selected the VideoCipher II system. So a homeowner can, with confidence, buy equipment that includes VideoCipher II descrambling and know that they will have access to all scrambled entertainment type programming.

There are other satellite distributions that are used by the networks, for example, for their private communications to their broadcasting stations and for back hauling or sending information back for further processing before they retransmit it. Some of these networks have made choices about scrambling and some of them have not yet.

CBS is using VideoCipher I which is an earlier version of VideoCipher II system, very similar but not compatible.

There are a couple of other scrambling systems that are in use in the market place. One of them is used by private corporations, by and large, to transmit teleconferencing and private business communications. There are one or two others that are used in very small numbers.

So I think what I would have to say is that all of the major entertainment type programmers that have scrambled are using VideoCipher. There are, of course, a number of channels that are transmitted in the clear. C-SPAN is one example, that we saw this morning. I am sure that some channels will stay in the clear. Others may decide to scramble because not only the economic benefit, but also the technical benefits. They actually deliver a better picture and better audio and all these text features to their receivers.

Mr. **Kastenmeier**. I have a number of other questions, but we have a number of members here and I would rather yield to them and give them an opportunity. Your presentation was so interesting and provoking, in terms of questions, I suspect that I had better yield.

The gentleman from California.

Mr. **Moorhead.** Thank you, Mr. Chairman. Tom Mooney has reminded me that Will Rogers once said that the world was made up of lock makers and lock pickers. I guess this machine certainly is a lock maker.

Is this controlled from some central station or do they have to come in to a person's house in order to adjust it so that you can tell which channels they can legitimately get and which they cannot get?

Dr. **Medress.** It is all controlled from a central site. A homeowner that wants to buy programming can call any of all of the business systems that you see on the chart, connected to the DBS Center, to order programming. Each business computer that he calls will send a computer message to San Diego where it gets automatically processed, transmitted by telephone line to each of the program transmission uplinks, and then sent by satellite and received by the homeowner.

And this all happens within a matter of a couple of minutes.

Mr. **Moorhead.** Who will be controlling this central station, then?

Dr. **Medress.** The central station, which we operate, is just a combiner. It does not make any decisions. It is the programmer's business systems that are selling subscriptions to the TVRO owners who actually do the control. So if you called Showtime, for example, and order Showtime, the Showtime computer will send a message to San Diego to turn on your descrambler for Showtime. That message will be automatically processed, sent over the satellite and very quickly your descrambler will turn on.

Mr. **Moorhead.** What are the chances of someone breaking the programming or the controls so that they can take off programs?

Dr. **Medress.** As you said, there are lock makers and lock pickers. There always are people who are trying to beat a system. There was, in fact, a security problem with the VideoCipher II system that we became aware of approximately a year ago.

It had to do with how we had implemented some of the computer software in the descrambler, not with the overall design of the system. That was a problem that we very quickly corrected in the spring and we used what we call electronic counter measures and used special commands that were sent by computers to turn off pirate descramblers and render them inoperable.

There continues to be a lot of discussion about this in the press, but I think the positive note is that consumers are buying descramblers and having them authorized roughly at the rate of 25,000 a month, for an average of approximately eight services.

Mr. **Moorhead.** What are they having to pay for your descrambler?

Dr. **Medress.** There is another piece of good news there. The cost of descrambling has come down. Or I should say the cost of descrambling in a complete TVRO system has come down. The stand alone descrambler, which you would buy if you already had satellite equipment, we sell at a fixed price to our distributors, and it has a suggested retail price of $395. Of course, we do not control that. We only suggest that.

But we also sell the descrambling circuitry to 20 satellite receiver manufacturers like the one you see here. Today consumers have a wide variety of satellite receiver descrambler packages that they can buy. It is true that today you can buy a complete home satellite system with a dish and the electronics to control the dish and a satellite receiver with a built in descrambler and a year of satellite programming for less money than you would have paid 18 months ago for just a satellite system with no descrambling and no program fees.

Mr. **Moorhead**. What is a good round figure for that, for the year's service, if it is all wrapped up together?

Dr. **Medress**. I would say in the $1,500 to $2,000 price range. You can pay less than that for a lower featured system and of course you can pay a little more than that for a fuller featured system.

But the market place is really providing consumers with a large number of options because this is a fully competitive system. On the hardware side, it is competitive. As I said, there are 20 companies that build this equipment, that compete with us.

And it is also very competitive on the programming side. There is lots of evidence today that that is the case, because program prices have come down dramatically.

Mr. **Moorhead**. If they were involved in the last program that you suggested, would they just be leasing the equipment then or would they, in a course of a year, bought it and then the next year their services would be cheaper?

Dr. **Medress**. What I described was what is fairly common and that is to go to your satellite dealer and buy a complete package of equipment for $1,500 or so. You will typically have included free programming for a year.

When that year is over, then you have to pay for programming, so you are not leasing the descrambler, you have bought it out right. But the cost of programming is quite attractive now. One of the program offers has a package of two movie services and 12 basic type advertiser supported services that cost around, I think, $22 to $25 a month on a yearly basis, which is very competitive with cable costs or even less than some.

Mr. **Moorhead**. That includes virtually all of the systems that are available, HBO and MovieTime and the whole works for $25?

Dr. **Medress**. There are various packages that allow you to get all of the scrambled services that you are interested in.

Mr. **Moorhead**. There is one thing I wanted to particularly ask you about because I know one of the groups had included a suggestion to expressly limit the license to retransmissions in the C-band radio frequency range. Could you express the technicality of that and how it would work, if that was done?

Dr. **Medress**. Maybe what I could do is explain the difference between C-band and KU-band. C-band is a frequency range that most of the satellites in operation today run over. It is the kind of satellite that most cable programming is distributed over.

There are new satellites that operate at higher frequencies, which is called the KU-band range. Those satellites generally have not only higher frequencies but more power. So the net effect is that a home dish owner does not have to buy such a large dish and also does not have problems with what is called terrestrial interference, with interference from microwave telephone transmissions and things of that sort.

There are several KU-band satellites in use today and they are just beginning to be used for program distribution. There are companies that are planning to launch additional KU-band satellites in the next several years and they have the potential to open up the home satellite market because people with less space for larger antennas or people who want to spend less in the first place, because a smaller antenna costs less, might be interested in buying satellite receiving equipment.

Mr. MOORHEAD. Could you explain what the advantages and what the disadvantages would be of that limitation?

Dr. MEDRESS. The limitation of restricting it to C-band?

Mr. MOORHEAD. Yes.

Dr. MEDRESS. I can certainly state what the technical issues are. There are other people who are testifying who will have, I am sure, policy issues that they would like to address.

I might say that from an equipment supplier's point of view, of course, we would like to see the availability of scrambled services distributed as widely as possible because that helps our equipment sales. That is a very honest statement.

I think it also probably helps the TVRO owners to have the greatest possible set of choices, but I really cannot think to the policy issues that some of the parties here can better address.

Mr. KASTENMEIER. The gentleman from Oklahoma, Mr. Synar.

Mr. SYNAR. Thank you, Mr. Chairman, and Doctor, welcome. Good to see you again.

A couple of questions. Just one question, really. At our last hearing there was a great deal of concern about the number of decoders that were available at the present time. Is General Instrument prepared to meet the demand or are they meeting that demand now and what have they done to try and improve the availability of decoders?

Dr. MEDRESS. That is a very good question. There was, in fact, a shortage of consumer descramblers in the summer, this past summer. Our corporation spent $5 million to expand our production capacity to ensure that that shortage would be short-lived.

We are happy to report today that that shortage is over, from all indications that we have. We can produce 100,000 descrambling circuit cards a month. We did produce those for a short time at those quantities to make sure that there was full availability of equipment to all of our distributors and suppliers.

Now we have, in fact, reduced our production levels a little to match the market place demands. So we now have capacity beyond what the market place is requiring and, as far as we know, there is no shortage of descrambling equipment and we can increase our capacity without any additional capital expense at this time.

Mr. SYNAR. Thank you very much. That is the only question I had.

I think it is important to point out to the members, some of which have just arrived, of what the role of DBS is. You are a creation of the cable industry and there had been some concern about your testifying here as just another proponent for the cable industry.

Would it be a correct assessment to say that you are, in some aspects, and to use the word loosely, a utility which is serving the function of all the satellite signals that exist?

Dr. **Medress.** I think that is actually an accurate reflection. As you probably know, the VideoCipher Division was originally part of the MaCom Corporation until General Instrument bought us approximately a year ago. We developed the satellite scrambling system, under HBO's request to begin with, and then in conjunction with other satellite program distributors.

Our intention has always been to provide the highest quality equipment at the lowest possible price, to all of the potential users of this equipment. I think a good example of the utility that we fill is the DBS Authorization Center that you saw when you came to San Diego.

Originally, one of the cable programmers was going to operate that system, but the cable industry apparently felt more comfortable or I should say the cable programmers felt more comfortable with an interested but neutral third party operating that critical center. And we agreed to do it.

We had no reason to lobby to do it but we were certainly happy to do it to promote the use of this technology. As I said, we operate that center at cost and it truly is a utility.

Mr. **Synar.** Others could get into the business that you are in but really it does not serve much purpose because then what you would have is the requirement of someone sitting with a dish to have to go to 15 different places to get 15 different signals turned on, which would be like we have seen with the phone bills. You have got 15 different bills coming in on 15 different phone calls.

So there is some consumer pluses to having a one stop shopping type of place, not only for the cable operators but the dish owner, et cetera. I am under the understanding that you all are basically trying to serve the emerging technology, not necessarily the emerging central industry.

Dr. **Medress.** That is absolutely true. I might point out one other advantage to the home dish owner that we mentioned earlier. Not only does the home dish owner not have to go to 15 places to buy programming, but he does not have to have 15 descramblers, which would have been the case if there had not emerged a common de facto standard for the scrambling technology.

Mr. **Synar.** Thank you, Doctor.

Mr. **Kastenmeier.** Before I yield to the gentleman from California, Mr. Lungren, why do the cable operators need 12 different descramblers? Why do they not go to a system where there is a single shopping, one stop shopping center, such as DBS?

Dr. **Medress.** The basic difference between a cable system and a home dish is that the homeowner watches one channel at a time and switches from channel to channel. But the cable operator has to receive and transmit many channels simultaneously, so that all of those channels are available over the cable system.

So if the cable system in my community carries HBO and Showtime, the Disney Channel, CNN and ESPN and so on, then they need a descrambler for each of those services because a descrambler can only process one signal at a time.

Now, if I am a homeowner, I am only watching one signal at a time and so then it makes sense to have a descrambler that can switch from channel to channel. But a cable operator has to have a descrambler for each channel, just like the cable operator has to have a satellite receiver for each channel. He needs the electronic equipment to receive each channel from the satellite and retransmit it over his cable system.

With the advent of scrambling, in addition to a satellite receiver, he needs a descrambler for each channel, as well.

Mr. **Kastenmeier**. The gentleman from California.

Mr. **Lungren**. No questions, Mr. Chairman.

Mr. **Kastenmeier**. The gentleman from North Carolina.

Mr. **Coble**. Mr. Chairman, I have no questions.

Mr. **Kastenmeier**. The gentleman from Virginia, Mr. Boucher.

Mr. **Boucher**. I was interested in some of the figures that you provided in your initial presentation concerning the number of descrambling devices that have been sold. I think you cited that number at 270,000?

Dr. **Medress**. Right.

Mr. **Boucher**. And you indicated that about 25,000 more are now being sold every month. That is roughly accurate?

Dr. **Medress**. That is roughly accurate, correct.

Mr. **Boucher**. I am curious about the number of satellite dishes that are being sold today. Do you have any information about that? How is that industry doing? Is it growing today? Is it growing by a figure of 25,000 per month or more?

Dr. **Medress**. If you do not mind, I would like to defer that to Mark Ellison from the Satellite Broadcasting and Communications Association because he has more accurate and current information than I do.

My impression is that when HBO began scrambling in January of 1986 there was a tremendous downturn in satellite systems sales because it was a big adjustment for home dish owners. They had been used to getting free programming and, in fact, perhaps being sold their system on the promise of free programming.

The knowledge about the advent of scrambling was clear in the industry for quite a while before that. But no one paid too much attention to it. So there was a downturn in the industry. But as the scrambling situation has clarified, as it became clear that all major programmers selected the same system and it is all controlled through one point, so a dish owner only needs one descrambler.

As 20 companies now compete with us to build consumer equipment and the prices come down, as programming packages have come together, programming prices have come down, the dish industry has begun to recover and sales have begun improving.

I do not think they are at the level they were before scrambling, but at least they are moving in the right direction.

Mr. **Boucher**. And the path is upward, as far as you know?

Dr. **Medress**. As far as I know.

Mr. **Boucher**. I only have one additional question. In response to the Chairman's question, you indicated that the single unscrambling device can only unscramble one signal at the same time?

Dr. **Medress**. Yes.

Mr. Boucher. I gather, therefore, that in a situation where a person has two television sets in a home and desires to watch two different signals at the same time, that he would have to have two unscrambling devices?

Dr. Medress. That is true, but it is true that in the same way that, if he was connected to a cable system, he would have to have two cable set top converters. If he was listening to broadcast signals, he would have to have two television sets, each with their own tuners. Of course, television sets have tuners.

Mr. Boucher. There are some technological advantages to having a backyard dish, to being on the cable system, so let us look to the future just a little. What would be required, technologically, to equip your device to deliver two different signals to two different television sets in the same house simultaneously? The cost today, I gather, is $395. That is your suggested retail.

If the person wanted to have that capability, he would have to buy a full second device at that price. But cannot you somehow equip that device to perform that feat for something less?

Dr. Medress. As a matter of fact, the answer is yes, but for a different reason. The $395 price to the consumer is for a separate descrambler that is used in conjunction with an existing satellite receiver. Here is the satellite receiver with a descrambler built into it. That descrambler adds about $200 in cost to the satellite receiver.

If you have a second set in your home and you want that set to be able to independently watch other channels, then of course you need another satellite receiver. That goes without question. So what you would do is buy a satellite receiver that had a descrambler built into it.

Just like there is no way to build a satellite receiver that can receive two channels simultaneously without duplicating the circuitry, and then you might as well have two satellite receivers, there is no way to build a descrambler that can receive two signals simultaneously. It is completely analogous to the satellite receiver or the cable converter.

Now it would certainly be technically possible to build two sets of satellite receiving and descrambling circuitry in one chassis, but I do not think it would be economical. If it would, the marketplace will certainly provide.

Mr. Boucher. You today are, I assume, licensing to individuals who are constructing satellite dishes that have unscrambling devices built into them, are you not?

Dr. Medress. That is correct.

Mr. Boucher. Are you discounting, in any way, your price when you sell or license your technology to those manufacturers?

Dr. Medress. We have, I think, quite a reasonable licensing fee which really covers our cost of testing their satellite receivers to make sure they work properly with the descrambling equipment and giving them the technical information they need. We sell the descrambling circuit card to satellite receiver manufacturers for $150. That is our uniform price for the descrambling circuit card. Now that is not a descrambler.

That descrambling circuit card can be used either in a satellite receiver or in a stand alone descrambler chassis, which has a suggested retail price of $395. That is a uniform price.

We have small variations in our pricing for volume, but we invested a great deal of money in developing this system and we bought material and implemented production capacity for very high volume, essentially with no orders. Therefore, we were able to do forward pricing so that we have fairly uniform pricing and even the early purchasers of this equipment achieve the lower prices that would normally come when volume had increased a great deal.

Mr. **Boucher**. Thank you very much.

Mr. **Kastenmeier**. The gentleman from Virginia, Mr. Slaughter.

Mr. **Slaughter**. No questions, Mr. Chairman.

Mr. **Kastenmeier**. I just have one or two questions.

What do you see on the horizon, in terms of new technological innovations affecting this technology, which have not yet been achieved or marketed but which are being researched and possibly developed somewhere down the line?

Dr. **Medress**. Let me answer that in two parts. We have continuing development activity to improve our system and we will be gradually adding features to this system in a fully compatible and evolutionary way to handle larger subscriber populations and provide additional services.

But there are other technical developments that are ongoing in parallel with this scrambling technology we have discussed. One of them, of course, is high definition television or HDTV. There is a lot of interest, these days, in HDTV and what I would like to simply say here is that it is our full intention to provide the kind of VideoCipher access, control and additional feature technology to HDTV systems to the greatest of our ability.

So we are very actively involved in looking at HDTV as a technology, talking with the various companies that are developing HDTV technology approaches, and trying to ensure that the scrambling capability is compatible with the HDTV ideas that are evolving.

Mr. **Kastenmeier**. At the moment, you make no judgments about obviously the areas served, although you indicate that it is possible, through the DBS Authorization Center, to code certain areas for blackout. But if a person had a dish that was well within a cable market and well within the closest contours for purposes of off-the-air television reception, there is no one at the moment who, in the process, would black them out. There are no syndicated exclusivity rules that you have to otherwise observe, excepting you were talking about certain regional blackouts?

Dr. **Medress**. The blackout capability that is available to the programmers, and it is not us it is the programmers who operate their own channel. That blackout capability allows them to pick certain circular areas in the country to eliminate reception in.

A typical company that would do this is ESPN, the Sports Network. They might have a requirement in their contract, for example, for the baseball game that is coming out of Los Angeles to black out a 50 mile region centered around the stadium in Los Angeles.

They do that simply by going to the computer that runs their scrambler at the transmission site and typing in information that defines the center of that circle and its radius. Then the system automatically provides that information over the satellite to all the dish owners and their descramblers determine whether they are in the circle or not.

The programmer can specify up to 32 of those regions for any one program. The next program can have a different set of 32 regions.

But as I said, that was really designed for a sporting event type blackout, not syndicated exclusivity.

Mr. **Kastenmeier**. However, it is theoretically possible for programmers responding to certain rules, if these were FCC rules or whatever, to black out certain programs or areas to implement it through your system?

Dr. **Medress**. It is possible.

Mr. **Kastenmeier**. On a geographic basis or other basis?

Dr. **Medress**. Within the restrictions of the system. There are a maximum of 32 blackout regions per program. One of the, I suppose, potential problems in blacking out for syndicated exclusivity is that many of the popularly syndicated programs are carried by several hundred stations. Since the system can only blackout 32 regions, that is a limit that would have to be worked within. But within that limit, it performs that job very well.

Mr. **Kastenmeier**. You mentioned sportscasts. For certain events, I suppose it would be theoretically possible in the future to subscribe to or have the capability of permitting people to subscribe through your system, through certain programmers, if they develop in that way, the sale of events or shows individually. Even to call in a distant sports event from another city, as long as they are up somewhere on satellite.

It theoretically would be possible to subscribe to certain events on an event by event basis?

Dr. **Medress**. It is not only theoretically possible it is actually implemented in the system. It is something I did not have time to describe today, but there is a capability in the system that supports what is called impulse pay per view.

It allows another option for purchasing programs. In addition to calling and ordering programs for a year or a month or whatever time duration you are interested in, programmers will, starting next spring, be able to offer programs on a program by program basis. The scrambling system allows the home TVRO owner to simply tune to a channel that has a movie or sporting event of interest and be given information on the screen, just like you saw today, telling him how to buy the program.

He simply presses a button on his remote control, enters a password, and the descrambler locally allows him to purchase the program and stores information about what he has purchased. Then it is reported back, later, through the telephone system for billing purposes. So that is a very, I think, exciting possibility. I should have mentioned that on the what is on the horizon question that you asked.

Mr. **Kastenmeier**. Thank you very much, Dr. Medress, for a fascinating presentation of the state of the art of descrambling and how the system can work broadly speaking for the purpose of TVRO owners. Thank you, sir.

Dr. **Medress.** Thank you.

Mr. **Kastenmeier.** I would now like to call forward our first substantive or policy oriented witnesses, Mr. Timothy A. Boggs and Mr. James P. Mooney.

Tim Boggs is Vice President of Warner Communications, a position he has held since earlier this year. He will be appearing this morning as a representative of the Motion Picture Association of America. He is certainly well known to me. He graduated from the University of Wisconsin-Madison and worked as an intern in my office. He also worked as a counsel to my subcommittee for several years, before being lured to greener pastures.

Jim Mooney is President of the National Cable Television Association, a position he assumed some three and a half years ago, in April 1984. He previously served the U.S. House of Representatives as counsel to then Majority Whip John Brademas.

It is rare indeed to see both the NCTA and MPAA sitting amicably at the same table, which they have done actually on other occasions, as well.

I take it you have no other announcements to make, with respect to cable compulsory licenses, flat fees, or sunsets or anything else this morning? If you did we would certainly welcome the statement.

Actually, assuming that is not the case, I would like to call on first Mr. Boggs. Mr. Boggs.

TESTIMONY OF TIMOTHY A. BOGGS, VICE PRESIDENT OF PUBLIC AFFAIRS, WARNER COMMUNICATIONS INC., REPRESENTING THE MOTION PICTURE ASSOCIATION OF AMERICA; AND JAMES P. MOONEY, PRESIDENT, NATIONAL CABLE TELEVISION ASSOCIATION

Mr. **Boggs.** Thank you, Mr. Chairman.

It is a personal pleasure to be here on this side of the table, having been with you on the other side of the table so many times. I have a new respect for those who appear before you, and the work that has to go into the preparation of testimony.

Mr. Chairman, MPAA has supported in principle legislation that you and several colleagues have introduced to address the issue of whether and how individual owners of home satellite dishes should receive access to certain television broadcast signals that are intercepted off the air by so-called passive common carriers and distributed by satellite with the original intent that they be retransmitted by cable television system operators.

We continue to favor the underlying concept of your bill, H.R. 2848 and we can support timely passage of the bill with certain modifications, which I will outline.

As the subcommittee knows, companies that produce copyrighted motion pictures and television programming desired by the American public want nothing more than to satisfy that demand. The more households we can reach with our product, the better return on our significant investment and the better able we are to invest in the production of new copyrighted works.

With the coming of broadcast television works that were once available only in motion picture theaters could reach tens of millions of new viewers. In time, broadcasting itself became a major market for the production of new first run copyrighted works.

With the maturation of the cable television industry, a broader range of viewing options became available to over half of all U.S. television households. Cable itself has become an important market for our motion pictures and shows signs of becoming a significant market for new first run programming.

Mr. Chairman, as you mentioned, it is nice that NCTA and MPAA are at the table together. I think that perhaps there is a misconception in the trade press and elsewhere that NCTA or the cable industry is the enemy of the motion picture industry. That certainly is not true and we look forward to working with them on this and many other issues in the future.

Now, other new and exciting technology promises to bring even greater programming diversity to American consumers. We want all of these technologies to survive and thrive. We want to see healthy television networks, healthy independent television stations and healthy cable systems. If possible, we want to see a healthy and competitive home earth station market.

As program producers, we understand how well the spur of competition urges us to constantly improve our products. Similarly, competition among program delivery services makes each of them more responsive to what the consumers want.

No one likes the compulsory license. I do not think there is a person in the room, on either side of the table, who prefers compulsory licenses. In the best of all possible worlds, each and every new media competitor would arrive on the scene with the economic strength to fend for itself in the marketplace.

Unfortunately, because of the peculiar dynamics of media markets, this is not always the case. On occasion, these new competitors may require a brief period of nurture before they are able to stand on their own and compete for their share of the market. Cable television was a perfect example and Congress created a compulsory license for cable in 1976.

The compulsory license permits any cable system to retransmit copyrighted programming contained in television broadcast signals without negotiating for the performance rights. MPAA has been troubled by the cable compulsory copyright license, both in principle and in practice for some time.

Fundamentally, compulsory licensing is unfair to copyright owners. It removes their control over the marketplace distribution of their work, denies them the opportunity to secure the full value of their product, and it represents unwarranted Government interference.

There is no question that cable systems today have access to an abundance of programming barely dreamed of a decade ago. Cable is today a big, strapping marketplace competitor whose total revenues this year will approach those of the entire television broadcast industry. Whatever public purpose the cable compulsory license might once have served is now past. But the statutory imposition on the rights of copyright owners persists.

Although this is not a hearing on the cable compulsory license, this bill is an extension of that license, so I think I might mention a couple of the problems that we see with the cable compulsory license.

The compulsory license has led to a number of unanticipated consequences. A system intended only to expand the availability of broadcast television service to unserved households or under served households gave rise to a whole industry built on delivering distant signals to every local television market in the country.

In addition, certain broadcasters, such as WTBS and WGN frankly, decided to take advantage of the cable compulsory license to create what were, in effect, basic cable networks without the inconvenience and costs of having to negotiate the rights and pay the full value of the works they broadcast.

Other mischief has occurred that is of particular interest to this subcommittee since you are the subcommittee on courts. I would ask the members to take note of the footnote on pages six and seven of my testimony.

The cable compulsory license has turned out to be a litigious nightmare. Rather than meeting the cable operators at the bargaining table to discuss the value of our works, we must constantly meet them in administrative and judicial fora to debate the fine points of statutory language on which our compensation is based.

I know that Jim Mooney would agree that the costs to the Government and to the parties involved have been really quite substantial. We would all have wished we could have avoided those costs.

In view of all of these shortcomings to compulsory licensing, it is difficult for MPAA to come forward to support what amounts to an extension of such licensing for the TVRO marketplace. Nevertheless, we do.

We are motivated by what we perceive to be the exigent circumstances of TVRO's emergence in the media marketplace, the need to encourage TVRO as a new entrant and by this subcommittee's evident desire to ensure that copyright owner's rights will be fairly treated.

The TVRO business is a nascent business. They are providing multi-channel video services to many who would not otherwise not have access and they are the harbinger of the exciting new direct broadcast satellite services.

We share with this Congress and the American public the desire that the TVRO market should grow and take its rightful place in the marketplace. But a young TVRO industry cannot be expected to compete fully with other multi-channel media, so long as the other media have an unfair regulatory advantage.

I think we can say fairly that the cable compulsory license constitutes such an advantage. Therefore, and for the other reasons that I stated, we favor what is in effect a modest extension of the existing compulsory license, but we strongly believe this extension must be strictly limited in scope, purpose, established for a limited time, and directed to returning some semblance of marketplace negotiations to the business of transferring signal retransmission rights.

A number of important ideas, including a sunset of the license, which MPAA advocated in the last session of Congress have been incorporated in the bill and I would be pleased to discuss those elements during a question and answer period.

I would like to recommend to the subcommittee five refinements to the bill which are outlined in my testimony. As we have in the past, we would be pleased to work with the subcommittee starting today and moving through the markup session on each of these items.

First, we think it must be crystal clear that the bill is intended to cover only the delivery of superstation signals to individual TVRO owners for their private home use.

Second, common carriers should be liable under this bill if they make a direct or indirect charge for superstation services.

Third, we see no appropriate role for the so-called distributors of satellite services in the negotiation of rates for retransmission rights.

Fourth, copyright owners must have a means of ensuring the accuracy of common carriers' subscriber counts.

And fifth, the statutory license created by this bill must be expressly limited to the retransmission in the C-band radio frequency just described to you by your previous witness.

Mr. Chairman, I am pleased to be here on behalf of MPAA. While I may not be as eloquent as your normal spokesman for the Motion Picture Association, I will try to be as helpful as we move forward.

The subcommittee has gone a good distance toward balancing the rights of copyright owners and users in H.R. 2848. This bill is a practical and essentially fair response to the problem. We look forward to working closely with the subcommittee to address the remaining questions regarding the bill.

[The statement of Mr. Boggs follows:]

MOTION PICTURE ASSOCIATION
OF AMERICA, INC.
1600 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006

November 19, 1987

H.R. 2848, The Satellite Home Viewing Act of 1987

The Motion Picture Association of America, Inc. (MPAA) is committed to the growth of a healthy TVRO industry, one that will help preserve and promote competition in the media marketplace.

For this reason, MPAA supports, in principle, H.R. 2848, "The Satellite Home Viewing Act of 1987." MPAA believes that legislation along these lines will help the nascent TVRO industry to grow and to take its rightful place in the video market.

H.R. 2848 incorporates a number of important ideas which MPAA has consistently advocated. For example, the bill is transitional in nature, and sunsets after a fixed period of time; it moves toward replacement of government regulation with marketplace negotiations; and it is designed to place reasonable limits on the number of satellite-retransmitted broadcast signals that qualify for the statutory license. It is essential that these protections be maintained in any final legislation.

We urge the Subcommittee to make several additional refinements in the bill to: (1) clarify that the statutory license covers only delivery of superstation signals to individuals for their private use; (2) impose liability for royalties on common carriers if they make a direct or indirect charge for superstation services to TVRO owners; (3) limit future rate negotiations to parties with a direct interest: common carriers and copyright owners; (4) ensure that copyright owners have a way of checking the accuracy of common carriers' subscriber counts (on which royalty obligations are based); and (5) expressly limit the license to retransmissions in the "C-band" radio frequency range.

MPAA believes that, with these modifications, H.R. 2848 will both ensure TVRO owners access to so-called "scrambled superstations" and provide necessary protections for copyright owners.

MPAA's support for H.R. 2848 should not detract from either MPAA's long-standing opposition to cable's compulsory license or MPAA's belief that all parties concerned --consumers, copyright owners and program deliverers-- are ultimately best served by the give-and-take of the free marketplace. In our view, the exigent circumstances facing the TVRO industry warrant the enactment of a narrow, transitional statutory license designed to help get this industry off the ground.

TESTIMONY OF

TIMOTHY A. BOGGS
VICE PRESIDENT, PUBLIC AFFAIRS,
WARNER COMMUNICATIONS INC.

ON BEHALF OF WARNER BROS. INC. AND
THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

ON H.R. 2848

BEFORE THE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND
THE ADMINISTRATION OF JUSTICE
OF THE HOUSE JUDICIARY COMMITTEE

NOVEMBER 19, 1987

Mr. Chairman, and Members of the Subcommittee:

My name is Timothy Boggs, and I am Vice President, Public Affairs of Warner Communications Inc. (WCI). WCI is the parent company of Warner Bros. Inc., a producer and distributor of motion pictures and television programs, on whose behalf I appear today.

I am also here representing the Motion Picture Association of America, Inc. (MPAA), whose members, in addition to Warner Bros. Inc., include:

Columbia Pictures Industries, Inc.
Walt Disney Productions
De Laurentiis Entertainment Group, Inc.
MGM/UA Communications Co.
Orion Pictures Corporation
Paramount Pictures Corporation
Twentieth Century Fox Film Corporation
Universal City Studios, Inc.

Mr. Chairman, MPAA has supported, in principle, legislation that you and several colleagues have introduced in this Congress and the preceding Congress[1] to address the issue of whether and how individual owners of home satellite earth stations [commonly known as "TVROs" or "home satellite dishes" (HSDs)] should receive access to certain television broadcast stations that are intercepted off-the-air by so-called "passive common carriers" and distributed by satellite, with the intent that they be retransmitted by cable television system operators.

---

[1] I refer the Subcommittee to the testimony of Jack Valenti on H.R. 5126 before this Subcommittee on August 7, 1986 (99th Congress, 2nd Session).

We continue to favor the underlying concepts of your bill, H.R. 2848, and we can support timely passage of the bill with certain modifications, which I will outline.

MPAA Supports a Healthy and Robustly Competitive Media Marketplace

Our reason for supporting this legislation is quite simple: we believe in the need to preserve and promote competition in the electronic media marketplace.

The companies that produce the copyrighted motion pictures and television programming desired by the American public want nothing more than to satisfy that demand. The more households we can reach with our product, the better the return on our significant investment, and the better able we are to invest in the production of new copyrighted works.

It is in our interest, and in the interest of the consuming public, that improvements and innovations in the delivery of copyrighted audiovisual works be made as widely available as possible.

With the coming of broadcast television, works that were once available only in motion picture theatres could reach tens of millions of new viewers in the comfort of their own homes. In time, broadcasting became a major market for the production of new first-run copyrighted works.

With the maturation of the cable television industry, a broader range of viewing options became available to over half of all U.S. television households. Cable itself has become an important market for our motion pictures, and shows signs of becoming a significant market for new first-run programming.[2]

Now other new and exciting technologies promise to bring even greater programming diversity to American consumers. Most notable among these is the delivery direct-to-home of scores of channels of video programming by satellite.

Mr. Chairman, the motion picture industry has been and remains strongly in favor of the development and enhancement of consumer video technologies. We want all of these technologies to survive and thrive. We want to see healthy television networks, healthy independent TV stations, and healthy cable systems. We want to see a healthy and competitive home earth station market. We support Federal policies that preserve competition and promote new entry.

As program producers, we understand well how the spur of competition urges us to constantly improve our products. Similarly, competition among program delivery services makes each of them more responsive to what consumers want. More competition among the media will increase demand for new creative programming. By this market-driven process, the diverse viewing needs of our pluralistic society can be most efficiently met.

---

[2] The president of American Movie Classics and Bravo Cable Network, two leading cable programming services, has estimated that the cable industry would spend $1.7 billion to acquire programming in 1987. Communications Daily, October 6, 1987, at 5.

The Role of Compulsory Licensing

In the best of all possible worlds, each and every new media competitor would arrive on the scene with the economic strength to fend for itself in the marketplace. Unfortunately, because of the peculiar dynamics of media markets, this is not always the case. On occasion, these new competitors may require a brief period of nurture before they are able to stand on their own and compete for their share of the market.

Cable television is a perfect example. Cable's growth, particularly in urban markets, was stunted for many years by overregulation and by a lack of access to suitably attractive programming. Perceiving that the potential for cable to emerge as a significant medium depended in part on cable's access to broadcast television programming -- virtually the only readily-available source of "packaged" programming that cable could then offer -- Congress created a compulsory copyright license for cable in 1976.

This compulsory license permits any cable system to retransmit ("perform") the copyrighted programming contained in television broadcast signals without negotiating for the performance rights, and subject only to the requirement that the cable system report to the Register of Copyrights which signals it is retransmitting and remit to the Register royalty fees in an amount fixed by statute (but subject to adjustment by the Copyright Royalty Tribunal).

MPAA has been troubled by the cable compulsory copyright license both in principle and in practice. Fundamentally, "compulsory" licensing is unfair to copyright owners. It removes their control over the marketplace distribution of their work. It denies them the opportunity to secure the full value of their product. It represents unwarranted government interference with the give-and-take of marketplace economics.

The operations of the cable compulsory license demonstrate the particular, and often bizarre, inequities of this mode of licensing.

The cable compulsory license, intended to address a perceived problem of "foreclosure" of cable from the programming marketplace in 1976, has long since outlived any usefulness. There is no question that cable systems today have access to an abundance of programming barely dreamed of a decade ago. Cable is today a big, strapping marketplace competitor, whose total revenues this year will approach those of the entire television broadcasting industry. Whatever public purpose the cable compulsory license might once have served has faded into history, but the statutory imposition on the rights of copyright owners persists.

Government intervention through the compulsory licensing in 1976 soon led to unanticipated consequences. Soon, a system intended only to expand the availability of broadcast television service to unserved households gave rise to a whole industry built on delivering distant signals into every local television market in the country. The compulsory license permitted cable operators to invade the rights that local broadcasters had acquired in that programming. With the elimination of reasonable limits on the number of distant signals that a cable operator may retransmit, distant signal carriage proliferated, and copyright owners witnessed an entirely unforeseen appropriation of their works on a grand scale.

Meanwhile, certain broadcasters (such as WTBS and WGN) decided to take advantage of the compulsory license to create what were in effect "basic cable networks" without the inconvenience and cost of having to negotiate for rights and pay the full value of the works they broadcast. The compulsory license thus has had the deleterious effect of standing in the way of the transition of WTBS and others from free riders to full-copyright networks.

When the method of compensation for the "compulsory" use of one's copyrighted works is utterly divorced from the marketplace, all sorts of mischief can occur. Rather than meeting cable operators at the bargaining table to discuss the value of our works, we must constantly meet them in administrative and judicial fora to debate the fine points of statutory language on which our compensation is based.3/

3/ The inefficiency of the cable compulsory license is starkly evidenced by the costs the system has imposed on copyright owners, cable operators, government agencies and the federal courts. The Copyright Royalty Tribunal has made seven distribution and three rate decisions made since 1978; eight of these ten proceedings have been subject to appel-
[Footnote cont'd]

In view of all these shortcomings of compulsory licensing, it is difficult for MPAA to come forward to support what amounts to an extension of such licensing for the TVRO marketplace. Nevertheless, we do. We are motivated by what we perceive to be the exigent circumstances of TVRO's emergence in the media marketplace, the need to encourage TVRO as a new entrant, and by this Subcommittee's evident desire to ensure that copyright owners' rights will be fairly protected through the pending legislation.

How H.R. 2848 Can Serve the Public Interest

The TVRO business is a nascent business. There are just over two million private TVROs in use in the United States. They are providing multichannel video services to many who would otherwise not have access to any such service. And they are the harbinger of an exciting future in which direct-to-home transmissions (by so-called "direct broadcast satellites") may become a viable and fully competitive medium.

---

late review. The CRT and the Copyright Office have deducted $5.199 million out of the cable royalty pool to cover their administrative expenses. Program syndicators alone have spent some $6 million in legal, data and other expenses before the CRT and the U.S. Court of Appeals. It is reasonable to assume that comparable amounts have been spent by other copyright claimants in both rate and distribution proceedings. Moreover, cable operators and other parties have presumably incurred significant costs as participants in the rate proceedings.

The TVRO industry has not yet reached the critical mass of audience that would permit it to develop its own sources of original programming. If the industry is given a helping hand, it has the potential to one day become an entirely new market for creative works.

We share with the Congress and the American public the desire that the TVRO industry should grow and take its rightful place in the market. But a young TVRO industry cannot be expected to compete fully with other multichannel media (particularly cable television) so long as the other media have an unfair regulatory advantage over TVROs. Cable's compulsory license constitutes such an advantage.

Therefore, in the interest of levelling the playing field between the established medium and the would-be competitor, we favor what is in effect a modest extension of the existing compulsory license. But we strongly believe that this extension must be strictly limited in scope and purpose, established for a limited time, and directed at returning some semblance of marketplace negotiation to the business of transferring distant signal retransmission rights.

Essential Elements of a Superstation/TVRO Bill

A number of important ideas which MPAA advocated in the last session of Congress have been incorporated in the bill currently before this Subcommittee. We believe it essential that these be maintained in any final legislation.

First, and above all, any new statutory license to permit the scrambling and marketing of superstation signals to TVRO owners must be viewed as a transitional measure. A "sunset" date to ensure that Congress will take a fresh look at the continuing need for the statutory license after a period of time is absolutely necessary. Once the TVRO industry is firmly established, it must pay its own way. It should not be permitted to thrive on forced subsidies extracted from copyright owners through compulsory licensing. That was the grave error with the cable compulsory copyright license. That mistake should not be repeated here.

Second, any new statutory license plan must be directed toward replacement of government intervention with marketplace negotiation. The negotiation/arbitration requirements of H.R. 2848 are important in that respect. They will encourage copyright owners and the "common carriers" who commercially benefit from the use of copyrighted works to find marketplace means of exchanging program rights. This will provide valuable precedent for other forms of rights transfers. We do believe that the system for negotiation and arbitration in the current bill can be simplified somewhat, and we are anxious to work with the

Subcommittee to this end.[4]

Third, any new statutory license must not be viewed as carte blanche for expansion of the superstation business. There must be reasonable limits on the number of satellite-retransmitted broadcast signals that qualify for the license. When this Subcommittee first took up similar legislation just over a year ago, the only "superstations" were those intended for retransmission by cable system operators. But in the intervening months, we have seen a proliferation of new superstations aimed primarily or exclusively at the TVRO market. Such a development could not have been anticipated, and it has adverse consequences for copyright owners. At the very time when more and more full-copyright program services are being created[5], permitting the compensation that copyright owners receive to be determined by free-market forces, Congress should not encourage a retreat from marketplace bargaining through an open-ended statutory license.

We also wish to recommend to the Subcommittee several important refinements of the bill:

-- It must be crystal clear that this bill is intended to cover only the delivery of superstation signals to individual TVRO owners for their private use. Multifamily dwelling units, wireless cable operators, and commercial establishments equipped with TVROs should not come under its terms.[6]

---

[4] We commend the inclusion of a "flat fee" compensation system during the first four years of the statutory license. This streamlined approach avoids the confusion and complexity of the percentage-rate approach in the cable compulsory license, and should reduce the opportunities for mischief by those accountable for royalties.

[5] Even the leading cable "superstation," WTBS, is actively considering the transition from superstation status to full-copyright status.

-- Common carriers should be liable under this bill if they make a direct or indirect charge for superstation services to TVRO owners. For example, if the common carrier (or his authorised distributor) "gives away" a tier of superstation signals for free, but charges a fee for other program signals in a package of channels, the obligation to report and remit must still apply.

-- We still see no appropriate role for "distributors" of satellite services (acting as agents or otherwise under contract to the common carriers) in the negotiation of rates for retransmission rights. The only parties in interest to such a negotiation are the user of the product (i.e., the common carrier) and the owner of the product (i.e., the copyright owner). The distributor has no direct responsibility or liability under the bill; the buck stops with the common carrier. The distributor should be eliminated from the negotiation process.[7]

-- Copyright owners must have a means of ensuring the accuracy of common carriers' subscriber counts on which their royalty fee remittance is based. This can easily be accomplished by requiring carriers to permit access by copyright owners or their designees to reliable subscribership information, under procedures carefully designed to protect the privacy of subcribers.[8]

---

[6] This would closely parallel Congressional intent to carve out a specific, limited exception in favor of private viewing by individual TVRO owners in Section 705 of the 1984 Cable Act.

[7] It is in the interest of the common carriers to negotiate to keep rates as low as possible in order to maximize the attractiveness of their offerings. Thus, the common carriers can be expected to fulfill the role the drafters may have had in mind when they included distributors in the negotiation process.

-- The statutory license created by this bill must be expressly limmited to retransmissions in the "C-band" radio frequency range. As new, improved satellite and other video technologies develop, any copyright issues they may face should always be subject to marketplace resolution first. Government intervention should come, if at all, only as a last resort.

Conclusion

Mr. Chairman, I am pleased to convey to you once again MPAA's support for the public interest goals at the heart of H.R. 2848.

Competition among the electronic media should be stimulated in order that consumer choice can be expanded. Consumer access to superstation signals appears to be of considerable importance to the TVRO industry in the early stages of its growth. Therefore, there is a public interest rationale for facilitating TVRO access to this programming during the formative stages of the industry.

---

[8] We are aware of a private firm that currently audits cable system subscriber counts on behalf of some 20 cable programming networks. They generally rely on aggregate data provided by the local cable operators, supplemented with spot-check on-site audits. We understand that their methodology could be applicable here, providing reliable subscriber data while preserving confidentiality.

Inequitable regulatory advantages between competitors must be levelled. It would be inappropriate to permit cable systems to have continued, favored access to superstations while denying such access to TVRO owners. But while temporary measures to level the playing field may be warranted, Congress must continue to encourage free-market solutions to match demand for copyrighted video programming with supply.

H.R. 2848 presents an adequate interim solution to a thorny problem. MPAA supports H.R. 2848 in principle, but our sustained support requires assurance that any final legislation will grant maximum protection for the interests of copyright owners consistent with the Congressional goal of ensuring TVRO access.

Local broadcasters, and perhaps other parties, may also bring forward valid concerns that warrant this Subcommittee's attention. Some broadcasters, in particular, want to ensure that this bill applies even-handedly to network affiliates, commercial independents, and public TV stations, a principle that we can support. We hope for the opportunity to work with the Subcommittee to address legitimate issues through the mark-up stage.

Mr. Chairman, this Subcommittee has come a good distance toward balancing the rights of copyright owners and users in H.R. 2848. This bill is a practical and essentially fair response to the problem. We look forward to working closely with this Subcommittee to address the remaining questions posed by the bill.

We believe H.R. 2848 stands for an important principle: that the rights of copyright owners and the interests of consumers are best served by the free marketplace, and that government intervention should be limited to building transitions to such a marketplace. We urgently request that the final product of this Subcommittee's deliberations remains faithful to that principle.

Thank you again for the opportunity to address the interests of copyright owners in this matter. I look forward to your questions.

Mr. **Kastenmeier**. Thank you, Mr. Boggs. That was very concise, brief, and to the point. I guess I should resist any comparison of your presentation to that of Mr. Valenti.

But in any event, we are pleased to have your testimony. And now I would like to call on Jim Mooney. Mr. Mooney?

Mr. **Mooney**. Thank you. Mr. Chairman, I apologize for appearing before you this morning looking a little like Carmine DeSapio, as someone suggested to me this morning. The sunglasses are required by an eye infection I am suffering from.

I am not going to read my prepared statement, but merely will try to summarize why we support this bill. We do support it and urge its enactment.

This legislation is required by two factors. First, is one of those phenomena which occurs from time to time in the communications world where an unanticipated new market will spring up. In this instance, the market based on home satellite dishes, which now number nearly two million, and which represent the interest of many people, particularly those who live in rural areas, to take advantage of the same kinds of television services which are available in more heavily populated parts of the country.

And there is no copyright problem with arranging to sell people in that circumstance the made for cable services because they come copyright cleared.

The distant broadcast signals, however, which historically have been part of the cable menu are up on those birds as a consequence of the compulsory license system adopted by Congress in 1976. And the 1976 Act, fortunately or unfortunately, does not make explicit provision for sale of those signals to the home dish market. The 1976 Act is phrased pretty exclusively in terms of the cable market.

And there has arisen a legal controversy about whether the Act can be read to include the backyard dish market. Now you have some people out there who are reading it as allowing sales to backyard dish owners and they are doing so. You have some other people who are reading it as not covering such sales and they are not doing so. And as has been stated earlier in this hearing, there is at least one lawsuit which has been brought charging infringement.

I think this subcommittee will understand better than I that given the nature of copyright protection, and given the fairly draconian penalties which apply to infringement, the continuation of this controversy unresolved is, to some significant degree, going to inhibit the availability of these signals to home dish owners. And we think Congress ought to clear it up.

We think Congress ought to clear it up because we believe that dish owners ought to have available to them the same menu of programming as it available to cable subscribers. And we believe that there is a social value implicit in this. And it is the evening up of television viewing opportunities to people all over the country, no matter whether they live in scarcely populated rural areas or elsewhere.

And it is a fact that there are a lot of people in this country who do not live in places served either by broadcast stations or cable television systems. And the backyard dish, and its popularity, is an obvious answer to that problem.

I am not going to comment on the technical aspects of the bill. I think we have made our views known to the subcommittee before on those matters.

I would only add that I heard very clearly the chairman's suggestion that he would like it if the organization Mr. Boggs is representing today and mine could come to you with some other news.

I will say again, as I have, I think, during my past two outings before this subcommittee, that we would very much like to see some solution to this continuing controversy over the compulsory license system. And hearing this morning the pacific words of Mr. Boggs, I continue to have hope that we may yet do so.

I will stop there, Mr. Chairman, and be happy to answer any questions you might have.

[The statement of Mr. Mooney follows:]

STATEMENT OF JAMES P. MOONEY, PRESIDENT, NATIONAL CABLE TELEVISION ASSOCIATION, BEFORE THE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE, COMMITTEE ON THE JUDICIARY, U.S. HOUSE OF REPRESENTATIVES, NOVEMBER 19, 1987.

Mr. Chairman, members of the subcommittee, my name is James P. Mooney. I am President of the National Cable Television Association.

NCTA is the principal trade association of the cable television industry and represents over 2,400 cable systems serving more than 80% of the 44 million cable homes in the United States. We also represent 56 cable programming services who create, package, and provide quality TV programming for cable subscribers.

The purpose of H.R. 2848, the Satellite Home Viewer Copyright Act of 1987, is to bring the copyright law up to speed with the latest technology.

As the subcommittee is well aware, cable television systems have for over thirty years retransmitted the signals of distant broadcast signals to their subscribers, a practice which since 1976 has been governed by the cable compulsory license provisions of the Copyright Act. Over thirty seven million cable households today receive one or more distant signals, and the so-called "superstation" is now a well established feature of the television landscape.

In return for retransmitting these signals, cable systems pay valties determined by the Copyright Royalty Tribune to copyright holders of the programming contained on these signals, and also pay carriage fees to the satellite carriers which deliver the signals to cable operators' headends. H.R. 2848 would amend the Copyright Act to permit these signals to be sold to owners of backyard dishes as well.

Mr. Chairman, there are nearly two million backyard satellite dishes in place today. Moreover, as of October 31, more than 267,000 dish owners had taken over one million subscriptions to the nine made for cable services which have scrambled their signals since early 1986. Because these services are "copyright paid", i.e. not retransmitted under the terms of the compulsory license, there has been no problem gaining copyright clearance for their sale to the developing backyard dish market.

Distant broadcast signals are a different matter, however. These signals are uplinked to satellite transponders by resale carriers without the necessity of obtaining copyright clearance rights because their ultimate distributors — cable operators — provide these signals to their subscribers under the Copyright Act's compulsory license provisions. The Copyright Act contains no express provision extending its compulsory license provisions (or for that matter its royalty obligations) to the backyard dish market, however, and there has arisen a controversy whether the compulsory license can reasonably be read to extend to this market.

03

Mr. Chairman, I don't think it would be particularly helpful for me to engage in a speculative discussion of what the courts ultimately would conclude in an infringement case involving the sale of distant broadcast signals to the backyard dish market under the Act as it presently is written. Let it suffice to say that a case has been brought, though not yet tried, and there is an extant legal controversy over this question. The Register of Copyright has concluded, moreover, that the Act as presently written does not cover backyard dish sales. Because the Copyright Act contains some rather draconian infringement penalties, I think it safe to conclude from this that whatever and whenever the outcome of the litigation, full availability of available distant broadcast signals to the backyard dish market is going to be severely inhibited until the Act is amended to clearly cover this market as well as the cable market.

We therefore support H.R. 2848 and urge its enactment.

Mr. Chairman, last year we shared with the subcommittee some more specific comments concerning a number of technical aspects of the bill (then H.R. 5126, 99th Congress) which I will not repeat here. I will refrain, as well, from commenting on some special problems which may arise from retransmission of the signals of the broadcast networks; others, I expect, will address that subject and offer suggestions. I would observe, however, that since the subcommittee last held hearings on legislation of this kind the FCC has initiated a rulemaking which proposes to reimpose a form of regulation discarded by the Commission in 1980 and known as "syndicated exclusivity." Under the old syndex rules, and presumably under any new ones, cable systems would be required to black out programs on distant broadcast signals where a local broadcaster had bought rights to the same program series and claimed exclusivity protection. These rules, which were adopted by the Commission in 1972 prior to Congress' action in 1976 requiring cable to pay royalty fees for the use of distant broadcast signals, were rescinded after the Commission concluded they were a solution to a problem which no longer existed and merely served to deny cable subscribers access to programs on distant broadcast signals legitimately imported by cable operators under an Act of Congress.

Lately, however, with broadcast interests increasingly alarmed by competition from cable, some of the broadcast trade associations have been pressing the FCC to put the rules back in. We understand, too, that some broadcast interests are advocating the application of the syndex rules to the home dish market.

This is not the time or place to argue the merits of the syndex controversy, but I would simply observe that if the Commission yields to the broadcasters' entreaties and syndex is put back in, a lot of these distant signals are going to disappear from the satellites as cable operators find their retransmission to be a logistical impossibility. If the subcommittee is concerned, therefore, that backyard dish owners, particularly those in rural areas, have access to this kind of programming, you might take a look at what the FCC is up to.

Syndex, in our view, is merely a subset of the lingering conflict over the compulsory license provisions of the '76 Act, and we believe the FCC correctly concluded in 1980 that it could no longer be justified in the face of the Act. In any event, it would seem to us a wretched policy that the government should effectively encourage (via the Act) the distribution of distant broadcast signals to cable and backyard dish subscribers, but then also require some of the most attractive contents of those signals to be blacked out. Consistency may in some matters be merely "the hobgoblin of small minds," but in this one it is a virtue to be admired.

Mr. Chairman, that concludes my prepared statement. I'll be happy to answer any questions the subcommittee may have.

Mr. KASTENMEIER. Thank you, Mr. Mooney, for that rather brief statement.

One thing I would observe is that many organizations which represent contrasting, and presumably economic interests that compete, are able to get together or find non-hostile certain arrangements, legislatively and otherwise. I think, at the outset, that one would think these arrangements might not be achieved. But from time to time, that does give us always the hope that accommodations in a mutual interest, and also serving the public interest, can be reached.

Mr. Mooney, as far as the reach of this bill is concerned, you mentioned there are two million, more or less, dish owners. Relatively few of them, I take it, would be within the service area of a cable operator. Is that your analysis?

Mr. MOONEY. Yes, but it is hard to tell precisely. There is no reliable data on that that I am aware of. My guess would be that two-thirds of them are probably outside cable served areas.

Mr. KASTENMEIER. Two-thirds?

Mr. MOONEY. That is my guess, yes.

Mr. KASTENMEIER. There is also a technical question. It is a follow-on question as far as television, you probably have even less reason to know the answer to that. Is it your impression that a similar percentage would be outside of—would be in unserved white areas? Do you have any feel, from a television standpoint, do you have any feel for what that might be?

Mr. MOONEY. I suspect that the proportion is probably somewhat smaller. I would make a guess at about half. And that may be a little bit high. You do, of course, have a number of cable television systems which are out in rural areas where there are no broadcast services available. And indeed, that was one of the original reasons for the development of the cable industry in the first place.

I think you would probably be safe to say that somewhere between 600,000 and one million of these dishes are in places where you cannot get broadcast signals, or you cannot get a full complement of broadcast signals, meaning the three nets plus a PBS, or certainly an independent.

Mr. KASTENMEIER. Mr. Boggs, what is the view of MPAA as far as the future of direct broadcast satellites or other similar delivery systems such as fiber optics, telephone companies and so forth? Do you have any sort of vision as to what you see five or ten years down the line?

Mr. BOGGS. As Jim noted, having visions in this business is a dangerous business itself. It is very hard to predict what the future will hold. Here we are today trying to grapple with something that has been with us already for a few years.

I would say that we are very excited about the development of the fiber optic cable options that several of the telephone and cable companies have been exploring. We think that there may well be some break-throughs in that area, particularly in the pricing of the fiber optic delivery system, so as to make it an important part of the delivery of our programs to the public in the years ahead.

As you know, direct broadcast satellite has had a somewhat spotty past. The investment of capital necessary to run such a system has turned out to be so forbidding as to frustrate those who had some of the original designs. However, that is not to say that we do not expect there to be DBS in the future. I think that that is likely to happen. The subcommittee can probably consult with better soothsayers than I in the motion picture industry on that question.

But one of the things that I think has challenged you—it is certainly a challenge to us—is to try to fashion a statutory and regulatory framework that both permits the development of new technology, and recognizes the rights of those who either have made an investment in past technology or are the providers of programming that will sell that new technology.

And it is certainly not an insignificant challenge, but it is one I think you are meeting here today with this bill. And I am sure we will be back as new technology is developed on a whole range of issues over the years.

Mr. KASTENMEIER. In your prepared statement, you mentioned that the negotiation/arbitration section of the bill as a follow-on to the compulsory license four-year period can be simplified. Do you have any specific suggestions in that connection?

Mr. BOGGS. I shared one suggestion. And that is the removal of distributors from the negotiating process would make it somewhat simpler off the bat. As we stated, the distributor is not really a party in interest to the negotiations. They have no direct copyright liability under the act. Leaving the negotiations to the copyright owners and the copyright users, as is traditionally the case, we think will simplify items greatly.

A couple of other ideas. Perhaps as an inducement to compromise if we reach the arbitration stage, it might be wise to restrict the arbitrators to a choice between the last and best offers of the copyright owners and the satellite carriers. There is some useful precedent in this in the major league baseball negotiations, and we would be happy to consider that sort of option.

It also might be useful to restrict the role of the CRT in the negotiating framework, to either accepting or rejecting the conclusion of the negotiators rather than empowering them to set up a whole rate-making proceeding on their own. If they reject the negotiators' agreement, the negotiators could go back and do their work and then present it once again to the CRT, rather than burden the CRT with a whole new rate-making proceeding.

I am sure there are others, and as you move toward markup, we would be happy to put our creative hats on and try to come up with some others.

Mr. KASTENMEIER. I think at this point I will yield to my colleague, the gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Thank you. I had a question and I am going to give the front side to one of you and the back side to the other.

In the Motion Picture Association statement they urged the subcommittee to make several additional refinements to the bill, one to clarify the statutory license covers only delivery of superstation signals to individuals for their private use. Two, to impose liability for royalties on common carriers if they make a direct or indirect charge for superstation services to TVRO owners.

Three, limit future rate negotiations to parties with a direct interest, common carriers and copyright owners. Four, ensure that copyright owners have a way of checking the accuracy of common carrier subscriber counts on which royalty obligations are based. And five, expressly limit the license to retransmissions in the C-band radio frequency range.

The question I wanted to ask was, for you Mr. Boggs, if all of these amendments are not adopted, do you still support the bill? And on the other side, if they are adopted Mr. Mooney, does cable support the legislation?

I will let you start, Mr. Boggs.

Mr. BOGGS. We certainly would never appear to present an ultimatum to the subcommittee. That is not our purpose in making these suggestions. We do think that they are reasonable suggestions that are important to our interests. As we move toward markup, we could probably refine our needs, just as you point out problems with our request.

There are some that are perhaps more important than others, and as we work to try to simplify the bill, I guess I might say that removing the distributors from the negotiating process is probably one that would be up near the top of the list.

Several of the others are clarifications of what I believe are the author's intent of the bill, that we think would be important, but I do not believe would be controversial. The means of ensuring the accuracy of common carrier subscriber counts is something that the cable industry has managed to quite efficiently and fairly live with and we think, as well, is a reasonable improvement in the bill.

With regard to the C-band radio frequency limitation, that is basically our desire to know what it is we are buying here. The KU-band option that was described to you by your earlier witnesses will bring we know not what in the delivery of satellite services. We would like to limit this bill to the known universe at the moment. We think that is an ambitious enough task. We would hope the subcommittee would take that to be reasonable.

If you reject all of these, I am not sure, I would have to go back to the studios and see what they think.

Mr. MOORHEAD. Jim?

Mr. MOONEY. I do not have an instinctively adverse reaction to any of them. I would like to see the legislative language because we do, for example, have the carriers in our membership, as associate members, and I am sure they would want me to see exactly what is being proposed.

But as a generic matter, I see no reason why we would be opposed to any of those numbers.

Mr. MOORHEAD. The C-band radio frequency range, that limitation is one that does not always mean that much to you. We have had it explained, I know, but how does that strike you?

Mr. MOONEY. I conjecture that the reason MPAA has asked for that, and I conjecture further, that the reason some of my programmer members would favor that, is a feeling that the business we have now is a C-band business with the present generation of satellites and home satellite receivers whereas K-band represents the next generation of satellites and the next generation of home satellite receivers. There is a strong preference for dealing with that business, when and if it evolves rather than try to deal with it legislatively in an anticipatory way.

Mr. **Moorhead.** Mr. Boggs, the MPAA has stated in other testimony, that scrambling protects the integrity of the signal. But in this legislation, we are committing a common carrier to unscramble the signal without permission. Why do we do that?

Mr. **Boggs.** A central concern of a copyright owner at all times, and it is reflected throughout the copyright law, is to be able to have some reasonable control over the distribution of your product. Our products are not those sorts of things you can put in a cardboard box and deliver at the home of your customer. They are ephemeral, as your friend Jack Valente said so many times.

The scrambling option that is really quite sophisticated, and was described here today, gives us an opportunity to take some of those elements of uncertainty about the distribution of our product and make them quite certain. We can know precisely to which home, at what time, for what cost the product is being delivered.

The scrambling and descrambling system does indeed protect the integrity of the product. It gives us a chance to market it in a way that did not exist before.

Mr. **Moorhead.** Thank you both.

Mr. **Kastenmeier.** The gentleman from Oklahoma, Mr. Synar.

Mr. **Synar.** Thank you, Bob.

Tim, your testimony suggests that the arbitration section needs to be simplified. You also suggest that we have got to address the litigation costs of a compulsory license, both of which probably would be stimulated from the arbitration.

Given the fact that the proposal calls for a sunsetting after eight years, how would you respond to the proposal that we do not even have arbitration, since there is a time limit on it?

Mr. **Boggs.** I think that is a reasonable question. Considering the size of this market, and the elaborateness of the procedures that are in your bill, we may have gone overboard a bit. My invitation to try to work to simplify it is a sincere one.

I think, however, there is something valuable in this notion here that the statutory rate that is established, the compulsory license that is established, can eventually be replaced with something approaching a marketplace negotiation. It is a principle that is suggested by this perhaps over elaborate negotiation arbitration process.

That is a principle that is important to us. One of the reasons why we are supporting this bill, frankly, is that it suggests to the committee and to the world that once we have a compulsory license we do not have to live with it forever and ever and ever. There is some way of ending it.

I would be happy to consider options as we move on.

Mr. **Synar.** The fact is that you brought it up, you say arbitration needs to be simplified, that the litigation on prevailing or unprevailing parties are going to increase litigation costs. Why not even encourage that? Let us just say we will have eight years, that is it, and after that you win, you have got what you wanted?

It is your testimony that brought it up, that it is complicated.

Mr. **Boggs.** It is important to understand the way the bill would work. The private sector negotiation could begin immediately upon passage of the bill. The statutory rate is there in case the negotiation comes to nothing.

But it is our hope, and it would be our intention to announce our availability for negotiation right away. I think you would agree that private sector negotiation and arriving at a marketplace rate is always better than having Congress tell us what our product is worth. And that is not something you would like to do forever.

The suggestions that I made to the Chairman for simplifying arbitration process, I think, would perhaps be some improvements and we would be willing to consider others. I think we would be reluctant to abandon it completely because of that principle.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. KASTENMEIER. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. I guess the only question I have, Mr. Chairman, as I recall in the past, Mr. Mooney has expressed an opinion that the 12 cents rate was perhaps too high. I did not hear that in his testimony today and I wonder if you have come to a different feeling now, or is this just the price of making an agreement?

Mr. MOONEY. No, I intended to refer back to testimony I have given previously before this subcommittee on an almost identical bill, and certainly identical with respect to that provision.

12 cents, I think, was derived from extrapolating the total amount of royalties being paid per year as against the number of cable subscribers receiving each distant signal. And the average of that was 12 cents per subscriber per month.

That was done, however, prior to the decision of the United States District Court for the District of Columbia last year to the effect that the price was too high. I do not think there is available sufficient data yet on exactly what those royalties have been in the intervening period. But I suspect they are more on the level of six to seven cents per month per subscriber.

If it is the intent of the committee that the backyard dish owners pay a comparable amount, you might go to six or seven cents. On the other hand, precisely how much is paid here is probably of greater interest to Mr. Boggs and probably of greater interest to the satellite carriers than it is to me. I just make that observation, but I do not insist upon it.

Mr. LUNGREN. Mr. Boggs, could you give me the benefit of your thinking, as to why 12 cents is the appropriate figure to have?

Mr. BOGGS. As Jim says, the figure was extrapolated by the staff in the Copyright Office and some of us who were working on the drafting of the bill, to be basically comparable to the rates that a cable subscriber would be paying per signal per month.

What Jim failed to state was that the rate was also determined not only before the District Court ruling but before the Court of Appeals ruling which we expect sometime soon, to affirm that that is an appropriate figure.

Mr. MOONEY. I apologize. It is a matter currently under litigation, although supposing the committee felt like it, you could put language in this bill that would have the effect of setting the price at whatever would be the result of an extrapolation made from the cable price, at any point in time.

Mr. BOGGS. Absolutely.

Mr. LUNGREN. You two are getting along so well, I wonder if there is something around here in the air to cause it.

Mr. **Boggs**. This little bit of litigation, and I think Jim we would agree again, has turned out to probably be more expensive than all the moneys we will ever receive from this bill.

Mr. **Mooney**. The Copyright Bar does not work cheap.

Mr. **Lungren**. You are addressing a panel of lawyers, so we understand.

Thank you, Mr. Chairman.

Mr. **Kastenmeier**. The gentleman from Virginia, Mr. Boucher.

Mr. **Boucher**. Thank you, Mr. Chairman.

Mr. Mooney, I understand that NCTA has been involved in some negotiations with the programmers of television programming, and also with groups that are interested in serving as third party packagers, to try to facilitate a process where third party packagers can get into the business. Is that basically correct?

Mr. **Mooney**. I would not characterize it quite that way, Mr. Boucher. As you know, we have had pending for some time a controversy over whether the Congress should mandate third party distributors in the TVRO business notwithstanding that, in our view, the real issue ought to be whether the consumer is being served at minimal inconvenience and at a reasonable price, all of which we think is the case.

Notwithstanding that, we do obviously have a controversy still pending and at the suggestion and urging of several Members of Congress who have been involved in this controversy on the other side, I have talked to one group about the possibility of me making essentially a political appeal to some of the programmers in return for some help in extinguishing the controversy.

But I am told by the people I have been talking to that they believe that the protocol of the situation does not allow them to help me cool out the politics of this problem, which is the first time I have ever had anybody say that to me in this business. So we do not seem to be getting anywhere.

Mr. **Boucher**. Well, you have been involved in some negotiations and, although it is hardly relevant, I would object to your characterization of the legislation that you are referring to as mandating that third party programmers be involved. It simply would give them an opportunity in the event that the market would accommodate their entry.

Nevertheless, you have been involved in these negotiations and I understand that you have said, to the National Rural Electric Coop Association, that one condition of your willingness and good faith, to try to attempt to facilitate a package where they could, in fact, get into the business, would be their withdrawing their support for certain legislation. Is that correct?

Mr. **Mooney**. I think it would be accurate to say, Mr. Boucher, that I have said to them that I am not in the habit of attempting to intervene in the business deal process and that were I to do so, in this manner, I could only do so in the hope that the political controversy would be cooled as a consequence.

I do not think that is unreasonable, frankly.

Mr. **Boucher**. So then do I understand you correctly to say that you are not conditioning your willingness to help facilitate their entry into the market and their ability to do business with the cable programmers to mean that they would have to then withdraw their support for the legislation that is pending?

And I guess I am referring specifically to the Senate bill that was just approved this morning in committee, S. 889 and also H.R. 1885?

Mr. MOONEY. Mr. Boucher, I am frankly less interested in what would be the formal position of the NRTC than I am in what would be the attitude of the relevant political authorities, the Congress of the United States, with respect to the continuing need for such legislation.

Mr. BOUCHER. So is it then fair to characterize your answer as saying that you will continue, in good faith, to help facilitate an agreement between cable programmers and the National Rural Electric Coop Association without regard to their position?

Mr. MOONEY. No, sir, I have not said that.

Mr. BOUCHER. Well, are you conditioning your willingness to participate in good faith on their withdrawing their support for these bills?

Mr. MOONEY. I would condition my sticking my neck out with my own programmers who, very frankly, would prefer to the greatest extent possible to engage in this business without a middle man because a lot of them really do not think it is necessary to have a middle man.

I am conditioning my willingness to stick my neck out on the willingness of some of the people who are running the NRTC to help extinguish the political controversy.

Mr. BOUCHER. I do not understand what you mean by help extinguish the political controversy. Does that mean withdraw their support for the legislation or does it not?

Mr. MOONEY. It seems to me that if they did not keep pressing for the bill, it would do a great deal to extinguish the political controversy.

I am not sure what you are getting at, sir. Are you suggesting that anything I have done is improper?

Mr. BOUCHER. No, I am not suggesting that it is improper, but I am just trying to figure out the political dynamic of the cable industry with respect to the legislation that is pending, that would help improve services for the owners of backyard satellite dishes.

I sense that you have been working behind the scenes to try to impede the progress of the legislation. I am quite concerned by that because I, for one, tend to see the backyard satellite dish presence as being competition for your industry, and competition that is quite healthy rather than to the contrary.

And to the extent that you are trying to extinguish that competition or inhibit the level of services that make it viable, then I think your conduct is quite anti-competitive.

Mr. MOONEY. Mr. Boucher, I have been working up front and in public to impede the progress of the legislation because the people I represent, who include the programmers, think it is an unwarranted incursion on their business judgment. There has been nothing covert or secret about our attitude as a trade association towards these bills.

At the same time, I have had Members of Congress, who have been involved in this legislation, come to me and say we think this would go away if you could work something out with the rural electrics. And when I hear that, I think I am hearing something and take it seriously.

Mr. **Boucher**. Let me ask one additional question. For purposes of this hearing, I gather that H.R. 2848 which we are hearing today is not on your hit list. That is not one of the bills that you require that support be withdrawn for?

Mr. **Mooney**. We support the legislation, Mr. Boucher.

Mr. **Boucher**. Thank you, very much.

Mr. **Kastenmeier**. The gentleman from Ohio.

Mr. **DeWine**. I have got one question for you, Tim. You indicated, in your testimony, that this legislation would limit the expansion of superstations, and seemed to indicate that that is a good idea.

As a public policy question, why is that good public policy?

Mr. **Boggs**. It sounds pretty bad, does it not?

The superstation is, in our mind, a bootstrap industry. It is an industry that came into being by accident or, for them fortuitously, based upon the desire of the committee, in the 1976 act, to create a way for distant signals to be continued to be delivered to cable homes. That was a desireable goal.

What happened however was that, at least in the case of WGN, WTBS, and now you will hear later from others who are marketing basically superstation signals, that people saw an opportunity to use the compulsory license as a way to get programming, our programming, and to resell it.

The compulsory license is very cheap. We do not think that it has met, or is likely to meet, the value of our programming that are carried on those distant signals. Therefore, we are opposed to the creation of many, many, many more distant signals. We can certainly live with those that are there today, and the bill establishes the threshold for the introduction of new distant signals.

But we are concerned about the total expansion of distant signals. That is why that reference is in my testimony.

Mr. **DeWine**. So your attitude is a practical one. You have to put up with the ones that are there now, and maybe accommodate them, and accommodate the folks who are used to watching the Cubs and Braves, but that is it.

Mr. **Boggs**. That is right. I think we would prefer that WTBS become a cable service and pay full copyright fare. We would prefer that WGN become a cable service if they want to be delivered to homes, and negotiate with us for a package of programming and pay full copyright fare, just as HBO does, just as Showtime does, just as the others do.

Mr. **DeWine**. Thank you.

Thank you, Mr. Chairman.

Mr. **Kastenmeier**. Thank you.

Mr. Mooney, I am interested in your views on this bill and not certainly on other bills. I appreciate the fact that you are supporting this bill.

But in general, with respect to the association and most of its membership, what do you expect they would either gain or lose as a result of the enactment of this bill or something like it?

Mr. **Mooney**. I have a couple of companies who are interested in retailing these signals to home dish owners, but as a broad matter, I do not think we gain or lose anything.

This is a situation which obviously arises because there is a cable industry. That is what all these signals are doing up on the satellites. There has developed, over the past five or six years, a much smaller industry involving people who have gone out and bought a home version of what was originally developed as a commercial satellite receiving dish.

This was made possible by the FCC's action in 1979, deregulating the ownership and use of backyard dishes which was an action which my industry did not object to. This was further enhanced by the action of the FCC, I believe, in 1985, in pre-empting the ability of local governments to use zoning regulations to discourage the use of backyard dishes. And that was something that my industry did not object to.

We think that we have an obligation to come up here and say we do not object, either, to the Congress extending to this market the same regulatory treatment with respect to the use of distant broadcast signals as it has extended to my industry.

Mr. **Kastenmeier**. Thank you.

Mr. Boggs, basically what would the motion picture industry as a whole either gain or lose by this legislation?

Mr. **Boggs**. As you know, the leaders in the motion picture industry over the last two years, I think it is fair to say, have been very concerned about competition to the cable industry. The concentration that grows seemingly every day in the hands of a few large MSOs is of concern to us. I think it is of concern to others in the city, policy makers and others as well.

This bill, while a small gesture, I would admit, is a gesture on behalf of the notion that there should be competition to the cable industry. Cable, as Jim said, enjoys the benefits of compulsory license. This small competitor should enjoy this same benefit.

So to that extent, we benefit from the principle that there should be competition in the marketplace.

Second, we benefit from the notion that people should pay for our goods when they use them, something that is very important to us.

Third, I think we benefit from the notion in the bill that at some point, a statutory license, a compulsory license, is not necessary to do business in this market. This bill is valuable to us, in principle, because it phases out that compulsory license.

Mr. **Kastenmeier**. Thank you.

In fact, if there are no more questions, we have reached the noon hour. I want to thank both Tim Boggs and Jim Mooney for appearing here this morning and I hope, Jim, your eyes clear up and you will not have to use dark glasses.

Mr. **Mooney**. Thank you.

Mr. **Kastenmeier**. Thank you both.

Our last panel of witnesses, consisting of proponents of the legislation, will be first Mark Ellison, who will present the views of Satellite Broadcasting and Communications Association. Mr. Ellison is Vice President of Government Affairs and General Counsel of SBCA. He has had many years of experience in the communications field, having previously worked for Turner Broadcasting and U.S. Telecom, now called U.S. Sprint.

Second, Mr. Roy Bliss will present testimony on behalf of three common carriers, Tempo Enterprises, United Video, Inc. and Eastern Microwave. Mr. Bliss is Executive Vice President and Chief Operating Officer of United Video, which is a common carrier for WGN, WPIX and KTVT. He has worked in the cable television industry since a very early age, we are told.

Third, Mary, or Kazie, Metzger will appear for Satellite Broadcasting Network, SBN. She is President, Chairman of the Board, and co-founder of SBN. Ms. Metzger began her career in telecommunications in 1975. In the interim, she has worked for RCA American Communications, Inc. and Group W Cable.

I would also ask permission, without objection, to incorporate in the record, I believe he is here in the room, the statement of Mr. Bertram W. Carp, Vice President for Government Affairs, Turner Broadcasting System. So his statement, in its entirety, will appear in the record.

[The statement of Mr. Carp follows:]

STATEMENT OF
BERTRAM W. CARP
VICE PRESIDENT FOR GOVERNMENT AFFAIRS
TURNER BROADCASTING SYSTEM, INC.

IN SUPPORT OF H.R. 2848
THE SATELLITE HOME VIEWER COPYRIGHT ACT OF 1987

SUBMITTED FOR THE RECORD
OF THE
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

NOVEMBER 19, 1987

The Satellite Home Viewer Copyright Act of 1987, H.R. 2848, introduced by Chairman Kastenmeier, Congressman Synar and others, represents a far-sighted and thoughtful solution to what has become a major problem in the communications industry -- how to provide satellite-delivered superstations to the growing numbers of home satellite dish owners.

Turner Broadcasting System, Inc. supports this bill, and commends Chairman Kastenmeier for his enlightened approach to this problem. We are pleased to be given the opportunity to make comments for the record.

Turner Broadcasting System, Inc. owns and operates three satellite-delivered services: SuperStation TBS, Cable News Network, and Headline News. Turner Broadcasting also owns and operates the Atlanta Braves National League baseball team, maintains a 96% limited partnership interest in the National Basketball Association Atlanta Hawks, and owns and markets the MGM film library and other programs owned by TBS through its subsidiaries to broadcast, cable and home video markets throughout the world.

The issues before the subcommittee are complicated. In order to facilitate the purposes of this hearing, we feel the members might benefit from a brief history of SuperStation TBS, the nation's first basic cable network, which now reaches over

42 million households and involves annual advertising sales of over $70 million.

History of SuperStation TBS

In 1970, Ted Turner acquired a controlling interest in a UHF broadcast station located in Atlanta. The station's audience was quickly expanded through cable carriage. By mid-1979, the station had been renamed WTBS, and was being provided by almost one hundred cable systems to over 400,000 homes. But because reception was limited to the reach of sophisticated antennas and microwave relays, WTBS could not be received beyond a few hundred miles of Atlanta.

In 1975, Turner saw that satellite technology could provide a way to give distant cable systems access to WTBS that could not afford the expense involved in delivery of WTBS by terrestrial microwave. The use of a communications satellite to distribute television signals was a natural evolution of the terrestrial distribution technology that would result in better quality signals being available to a larger area at a lower cost than could be achieved through terrestrial microwave facilities.

At the time, TBS had incorporated a subsidiary which it intended to use to operate a satellite common carrier for the purpose of retransmitting WTBS to cable systems nationwide. Advised that the copyright law probably prohibited a licensed broadcast station from serving as its own common carrier, TBS sold the common carrier subsidiary, Southern Satellite Systems, Inc., for $1.00 to its current owners. The company is now known as Tempo, and has proved to be a successful and innovative provider of programming to various markets.

SuperStation TBS was born in December, 1976, when Tempo began retransmitting WTBS via satellite to its cable system customers. Tempo received WTBS's signal off-the-air. The signal was then uplinked to an RCA Americom domestic satellite. SuperStation TBS then could be received by any cable system in the United States with a satellite dish pointed at the RCA satellite.

SuperStation TBS thus became the first basic cable programming service available nationwide. The growth in the cable carriage of the SuperStation was fueled by the diverse family-oriented entertainment programming it carried. The SuperStation's attractiveness was further increased by the inclusion in its programming fare of major sports events. TBS acquired the Atlanta Braves in 1976 and a controlling interest in the Atlanta Hawks in 1977, in large part for their programming potential.

In mid-April of 1979, Tempo began receiving the signal of WTBS by means of a direct microwave interconnection between WTBS's transmission tower and Tempo's uplink facility in Douglasville, Georgia. In addition to improving WTBS's signal quality, the microwave interconnection with Tempo allows TBS to substitute national commercials in the signal sent to Tempo in place of purely local commercials broadcast over the air in Atlanta. This method of operation has been approved by the Federal courts as consistent with the copyright laws. Although Tempo charges for carriage of WTBS, under the terms of the Copyright Act of 1976, WTBS cannot and does not receive any portion of the operator payments, and therefore must rely solely on advertising revenues to finance its operations.

TBS has made no effort to hide WTBS's emergence as a superstation. To the contrary, TBS actively encourages cable systems to contract with Tempo for carriage of WTBS and has widely publicized the expansion of WTBS's audience through cable carriage. Information concerning the size of WTBS's cable audience is regularly reported in television industry trade journals.

The copyright owners from whom TBS has obtained program licenses are under no compulsion to license works to TBS. Those copyright owners who continue to license works to TBS do so with the knowledge that WTBS's programming is being retransmitted by Tempo to cable systems across the nation. All but one of the current WTBS programming contracts were signed since satellite distribution of the superstation has commenced.

Throughout the 1980's, WTBS has also renewed virtually all its syndicated programming contracts for series and movies. In all cases, these contracts were freely entered into by willing sellers, in full recognition of the fact the programming was to be carried nationally by Superstation TBS. In fact, many of the contracts expressly acknowledged WTBS's right to substitute national commercials on its national feed.

Program suppliers receive compensation for the cable carriage of WTBS in two ways:

1. Direct Payments from TBS

As WTBS's audience has expanded, copyright owners have demanded much higher license fees from TBS commensurate with the SuperStation's nationwide cable audience. On an annual basis, the total license fees paid by TBS to program suppliers has increased from $713,325 in 1975 to $15,276,478 in 1986, an over 20-fold increase. In that same period, the total dollar amount of new program license agreements executed annually by Turner Broadcasting has increased from $816,296 in 1975 to $26,200,000 in 1986, an increase of over 3,000 percent. Moreover, in the first five months of 1987, WTBS executed agreements for over $21,000,000. TBS has accepted these increased costs, on the assumption that the law would permit continued national coverage.

2. Copyright Payments from Cable Systems

Program suppliers receive compensation for the cable carriage of WTBS a second way. In 1976, Congress amended the Copyright Act and established a compulsory copyright license where cable systems may retransmit broadcast signals so long as they comply with statutory formalities. In return for this compulsory license, cable systems are required to pay a royalty fee to the Copyright Office.

These fees in turn are distributed by the Copyright Royalty Tribunal. The bulk of these moneys is distributed to program suppliers whose programming was carried on broadcast stations like WTBS, which are imported into distant television markets. Thus, in addition to direct license fees paid by Turner Broadcasting reflecting its nationwide carriage, program suppliers receive license fees from cable systems via the CRT.

TBS Has Reinvested the Additional Revenues from SuperStation TBS in Innovative Programming and News Services

The revenues from the SuperStation made possible the start and fostering of Cable News Network (CNN) and its companion news service, Headline News.

The growth in cable system carriage of WTBS, coupled with the national advertising time that TBS could sell utilizing its microwave feed to Tempo, also provided TBS the resources to create its own programming. Original programming endeavors include "Portrait of America," the National Geographic, Jacques Cousteau, and World of Audubon specials, as well as original first-run family comedy series. In 1986, approximately 24 percent of programming broadcast was produced specifically for the company.

To ensure quality programming for the future, in 1986 TBS paid over $1 billion for the MGM film library and extensive rights to the Warner Bros. and RKO libraries, which collectively comprise one of the largest feature film resources in the world, consisting of approximately 3,600 pictures. TBS' analysis underlying this acquisition was that the product could profitably be sold to broadcast stations and also appear on WTBS.

Turner Broadcasting's Approach to Satellite-Delivered Packages

CNN and Headline News were the first basic cable networks to scramble -- in July of 1986. TBS moved to scramble as quickly as the Videocipher II technology emerged as the industry standard, for a simple reason. CNN and Headline News are supported 45% by advertising and 55% by subscriber fees. For years they have been plagued by "free riders" -- particularly businesses like hotels, motels and bars -- who have received CNN and Headline News for free while cable customers have paid. Scrambling is the only effective way to make sure that those who use distribution methods other than cable to receive CNN and Headline News also pay for these valuable services.

Beginning in late 1985, before CNN and Headline News scrambled, TBS offered its cable affiliates non-exclusive distribution rights, which allowed them to sell CNN and Headline News to home dish owners in and near their cable franchise areas. To date, approximately 30% of TBS' cable affiliates are involved in marketing to home dish owners.

In mid-1986, TBS opened its own consumer order center to make CNN and Headline News available nationwide to home dish owners through a toll-free number. TBS sells both services combined for $25.00 a year, a little over $2.00 a month and less than a quarter of the $111.80 annual cost of a Washington Post suscription.

On June 30, 1986, TBS authorized HBO to sell CNN and Headline News concurrently with HBO/Cinemax, and on July 30, 1986, TBS authorized Showtime to market CNN and Headline News with Showtime/The Movie Channel. CNN and Headline News are included in the $10.95 monthly package of basic services ($7.00 with subscription to Showtime or The Movie Channel) announced by Viacom Satellite Networks.

TBS has entered into arrangements with manufacturers and wholesalers of home dishes and descramblers under which satellite equipment purchasers receive free or discounted subscriptions to CNN and Headline News. At present TBS has such arrangements with over 20 companies.

TBS has worked hard to involve retailers of home dish equipment in the sale of CNN and Headline News. At present over 3000 home satellite equipment retailers are engaged in selling CNN and Headline News.

And in June of this year, TBS entered into an agreement under which the National Rural Telecommunications Cooperative, affiliated with the National Rural Electric Cooperatives Association, will include CNN and Headline News in a package of program services which NRTC is marketing to home dish owners in conjunction with rural cooperatives around the country.

Although Turner Broadcasting has scrambled and aggressively marketed CNN and Headline News to home dish owners, TBS does not control or participate in either the recent scrambling of SuperStation TBS in October 1987 by Tempo or Tempo's marketing of SuperStation TBS to home dish owners. Under the copyright laws, the decisions with respect to scrambling of SuperStation TBS must be made by the common carrier and not by SuperStation TBS.

Experts differ on whether current copyright law can be read to allow marketing of satellite-carried broadcast signals to home dish owners. Nevertheless there is a respected body of opinion that the copyright law in its current form does not allow such marketing. TBS would welcome the opportunity to encourage and actively support the marketing of SuperStation TBS to home dish owners. However, these legal uncertainties prevent us from doing so, and in fact caused us to withdraw from an earlier attempt to market a package largely comprised of superstations to the TVRO industry.

On March 17, 1986, Registrar of Copyrights Ralph Oman discussed this issue in a letter to the Chairman of this subcommittee. The letter states in part as follows:

> Congress neither approved, implicitly or explicitly, nor did it even contemplate this type of activity in granting the exemption to passive carriers. . . .Therefore, I reach the preliminary judgment in this difficult and controversial area of law, that the sale or licensing ofdescrambling devices to satellite earth station owners falls outside the purview of Section 111(a)(3), particularly where the carrier itself encrypts the signal.

Until this question is clearly resolved, SuperStation TBS cannot benefit from the aggressive marketing approach that has been so successful with CNN and Headline News. Therefore Turner Broadcasting supports the efforts of this subcommittee to blaze a clear path through this legal thicket, by expressly authorizing the sale of satellite-delivered broadcast stations to home dish owners.

TBS Supports H.R. 2848

The bill introduced earlier this year by Chairman Kastenmeier, H.R. 2848, the Satellite Home Viewer Copyright Act of 1987, represents a rational solution, and we support the bill in its current form. Its enactment may well be crucial if the TVRO market is to succeed.

It is always the case that the legislative process must balance competing interests. H.R. 2848 has achieved a workable balance of interests, and thus should receive the support of programmers and the TVRO community alike. Obviously, the bill is not perfect from our point of view. For example, we would prefer that the license to transmit to home dishes be provided on a permanent basis. But we are willing to support a fair compromise, and we urge others interested in serving the home dish marketplace to swallow their objections and do so as well.

Thank you for the opportunity to comment on this important legislative effort.

Mr. KASTENMEIER. Mr. Ellison, Mr. Bliss, Ms. Metzger, you may proceed in order of introduction and we will reserve questions until you have concluded your three presentations.

Mr. Ellison.

TESTIMONY OF MARK C. ELLISON, VICE PRESIDENT OF GOVERNMENT AFFAIRS AND GENERAL COUNSEL, SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION OF AMERICA; ROY L. BLISS, EXECUTIVE VICE PRESIDENT, UNITED VIDEO, INC., REPRESENTING SOUTHERN SATELLITE, UNITED VIDEO, INC., AND EASTERN MICROWAVE, INC.; AND MARY C. (KAZIE) METZGER, PRESIDENT, SATELLITE BROADCAST NETWORKS

Mr. ELLISON. Thank you, Mr. Chairman. On behalf of the SBCA, I am very pleased to be here today. I would like to thank you, Mr. Synar, Mr. Boucher, and Mr. Moorhead for your introduction of this crucial legislation.

The SBCA, whose manufacture and distributor members are responsible for about 85 percent of the systems installed in the marketplace today, strongly support H.R. 2848. We, too, have some concerns about some provisions of the bill. We will work with the subcommittee toward modifications, some of which have been mentioned by Mr. Synar earlier.

Before I go into specifics about the situation that exists today with the copyright compulsory license as it respects the TVRO market, I would like to mention a few key dates in the history of satellite television, just to put things into perspective.

In September of 1975, HBO became the first programmer to deliver programming via satellite to cable head ends. About a year later, a gentleman by the name of Taylor Howard, who is now the chairman of the SBCA, went out into his garage and with spare parts, built the first home satellite dish. That was September of 1976.

In 1979, Neiman-Marcus put out a christmas catalog and on its cover was a home satellite dish and the price of that dish in 1979 was $36,000. Today, as you have already heard from some of the witnesses, a top of the line system with remote control, digital stereo, and top quality video can be purchased for about $3,000.

In 1980 there were 5,000 dishes sold and by 1985 the annual rate was something in excess of 700,000 dishes. In 1986, however, HBO scrambled and other programmers followed, and in the ensuing confusion and concern about programming availability, the level of sales dropped to 250,000 per year down from about 750,000 per year.

This year it looks like the numbers will stay about the same. We will be around 250,000 systems. The market is poised for a comeback. We see the possibility of a strong resurgence in C-band and we are on the verge of launching K-band satellites and we think our market is ready to take off.

But there is one thing that can really change that picture, to the great detriment of the TVRO market, and that would be the failure of Congress to adopt H.R. 2848. We are faced today with a very serious threat, and that is the loss of superstations and network signals.

If our industry and our viewers lose those 14 superstations that are out there today, we believe that the damage to our industry could be greater than that caused by the 1986 scrambling of programmers. Networks and superstations have scrambled or will scramble. The networks intend to use an incompatible scrambling system. Right now the only access in much of rural America is via satellite interception of the network feeds.

Two of SBCA's members, SBN who is here at the table with me here today, and NetLink USA, have offered a solution to the problem of serving that last mile and reaching those viewers that are out in rural America who cannot receive the off air signals. That is the retransmission of network affiliate signals via satellite.

NetLink, I might mention, does have a contract with NBC, or is in the process of negotiating a contract with NBC, however I do not think that that is a complete solution to the problem. There are underlying copyright holders who have yet to agree to that contract and it is imperative that this legislation before us retain the network signals throughout the legislative process and that the bill be passed in tact.

The common carriers and other satellite programming providers are selling the superstation signals to the backyard dish market and both the network carriers and the independent station carriers are doing so today using the 1976 compulsory license. There is a problem.

As has been referred to here today, SBN has been sued by the networks in two jurisdictions with the fundamental issue there being the question of whether the 1976 Act applies to the retransmission of distant broadcast signals to the backyard dish market.

If SBN loses its suit in New York or in Atlanta, the repercussions of that case or the precedent of that case will apply to the independent stations as well, in all likelihood. It is very possible that our industry would face the extreme damage referred to earlier, and that is the loss of all of the superstations.

This bill assures access to all Americans to network and independent station programming. It draws a very fair balance between the public interest and the interests of the copyright holders. I would say, in response to some of the questions that Mr. Moorhead has asked, and anticipating that question, that in our opinion this bill must apply to both C-band and K-band transmission. To limit it at this time makes no sense. It will only result in our being back here again, within a year or two, seeking to broaden to cover the transmission by KU-band.

This bill allows our industry to grow and become a viable form of program distribution. Access to network and other programming must remain available to all Americans. H.R. 2848 assures that every television home, no matter where it is located, will be able to share in the entertainment, sports, news, and educational programming provided by the networks and superstations.

Thank you. Mr. Chairman, I have some handouts relating to satellite television and some of the questions earlier about system sales, which I would like to have made part of the record, with your permission.

[The statement of Mr. Ellison follows:]

③

Satellite Broadcasting and Communication Association
of America

Officers

President
Chuck Hewitt

Chairman
H. Taylor Howard
Chaparral
Communications, Inc

1st Vice Chairman
Daniel M. Zinn
Hughes
Communications, Inc

2nd Vice Chairman
Martin C. Lafferty
Turner Broadcasting
System, Inc

Past Chairman
Dr. John Clark
RCA Astrospace

Directors

Paul Heinerscheid
USSB, Inc

dward E. Reinhart
OMSAT Corp

Stephan Schulte
SHOWTIME/
THE MOVIE CHANNEL, Inc

Bob Caird
Home Box Office, Inc

Hans Giner
Luxor Corporation

Larry Nelson
General Instruments

Gordon Main
Main Electronics Co

Hal Haley
Davis Antenna, Inc

Charles Ergen
Echosphere Corporation

Hiro Sugiyama
DX Communications

Edwin (Ned) Von Hamm
Christian Broadcasting
Network, Inc

TESTIMONY OF

MARK C. ELLISON

VICE PRESIDENT OF

GOVERNMENT AFFAIRS AND GENERAL COUNSEL

SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION

OF AMERICA

before the

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES AND

THE ADMINISTRATION OF JUSTICE

UNITED STATES HOUSE OF REPRESENTATIVES

regarding

H.R. 2848

THE SATELLITE HOME VIEWER COPYRIGHT ACT OF 1987

November 19, 1987

300 North Washington Street • Suite 208 • Alexandria, Virginia 22314
Phone (703) 549-6990 FAX (703) 549-7640

Mr. Chairman and members of the Subcommittee, my name is Mark C. Ellison and I am the Vice President of Government Affairs and General Counsel for the Satellite Broadcasting and Communications Association of America (SBCA). First of all, I would like to express our sincere thanks to the Chairman, Mr. Moorhead, Mr. Synar, and Mr. Boucher for their introduction of the Satellite Home Viewer Copyright Act of 1987. I also wish to express our gratitude to the Subcommittee for holding this hearing and giving me the opportunity to testify for the SBCA in support of this crucial legislation.

The SBCA is a trade association comprised of four basic groups: satellite manufacturers and system providers; earth station equipment manufacturers; distributors and retailers of satellite television equipment; and satellite television programmers, including program originators, common carriers and program packagers. SBCA's manufacturer and distributor members are responsible for over 85% of the home satellite systems sold today. For the information of the Subcommittee, I have attached a roster of the SBCA membership to this testimony.

Satellite television direct broadcasting service offers the American consumer the very best in technological quality and the greatest choice in programming. Most importantly, it offers rural Americans the chance to receive the same programming enjoyed by those in urban areas.

Everyone in the home satellite television industry stands to be deeply affected by the legislation at hand today. In 1985, over 700,000 Americans installed satellite television antennas. In January of 1986, HBO became the first programmer to encrypt (or "scramble") its programming. Other programmers followed, and in the ensuing confusion about program availability dish sales fell to under 250,000 systems in 1986. After two years of devastating sales levels, the home satellite television industry is poised to stage a comeback. However, due to uncertainties in the existing Copyright Act and its compulsory license for the retransmission of distant broadcast signals, our industry and its customers face the imminent threat of losing access to network programming and all of the independent "superstations". The detrimental impact which such a loss might have on our industry cannot be overstated. The loss of the 14 existing superstation signals could be equal in impact to that suffered when programmers first scrambled their signals. (A list of the 14 superstations is attached to my testimony.)

All three of the networks have announced plans to encrypt their satellite delivered backhauls and network feeds. In much of rural America the only access to network programming is the reception of those signals with a dish antenna. The plans of the networks are to use an encryption system which is not compatible with the system now widely in use by home satellite viewers: General Instrument's VideoCipherII. Unless common carriers are able to retransmit distant network affiliate signals, millions of Americans will lose access to network signals.

In an effort to fill the void which will occur when the networks scramble, two SBCA members, Satellite Broadcast Network Inc. (SBN) and Netlink USA have commenced operations whereby they receive the off-air signal of network affiliates and encrypt and retransmit those signals to home satellite dish owners.

Similarily, signals of the independent "superstations", (e.g., WTBS (Atlanta), WPIX (New York), WWOR (New York), and KTVT (Fort Worth)), have been scrambled. However, the encryption system used by the common carriers uplinking the signals of those stations is the VideoCipherII, and the signals are being marketed to home satellite viewers.

All of the entities delivering network and independent distant broadcast signals signals today are doing so under the 1976 Copyright Act, taking the position that they are "wireless cable systems", entitled to avail themselves of the same compulsory license enjoyed by other cable systems. However, this position has come under attack. In two separate actions, the networks have instituted litigation against SBN, challenging their use of the compulsory license under the 1976 Act. The fundamental issue in that litigation is the question of the applicability of the compulsory license in the delivery of distant broadcast signals to home satellite viewers. Therefore, a decision against SBN in either of those actions would, in all likelihood, result in the loss of all superstations for satellite television viewers.

Enactment of Bill before you today would eliminate that threat and assure all Americans of access to network and superstation programming.

H.R. 2848 provides a mechanism whereby access to distant broadcast signals by home satellite viewers will be assured and harm to the fledging DBS industry will be prevented. At the same time, this statutory license will have little or no adverse effect on the rights of copyright holders and licensees.

As H.R. 2848 moves through the legislative process, the SBCA will work to modify some provisions of the Bill in order to achieve the best possible legislation. In so doing, we will seek to balance the interests of our own industry against the concerns of copyright holders and licensees. There is one provision in particular which we will seek to revise: the limitation on superstations launched after June 1, 1987. Presently, H.R. 2848 would provide a statutory license to superstations delivered via satellite as of June 1, 1987, and those subsequently launched if they are delivered to at least 10% of the cable market. The SBCA does not believe that the satellite broadcasting industry should be tied to any benchmark of penetration by a competing technology and we will seek an acceptable alternative.

Copyright holders who might stand in opposition to the Bill must bear in mind that the ultimate aim of the copyright law is to stimulate artistic creativity for the general public good. In the recent case of Sony Corp. of America v. Universal City Studios, the Supreme Court noted:

> The monopoly privileges that Congress may authorize (under the Copyright Act) are neither unlimited nor primarily designed to provide a special private benefit...The copyright law, like the patent statute, makes reward to the owner a secondary consideration.

The adoption of the compulsory licensing scheme for cable systems by Congress was to further this public interest. Likewise, the Bill before you holds the promise of significant public benefit and the statutorily determined royalties are an acceptable legislative balance between the need for program dissemination and appropriate compensation to the copyright holders.

Similarly, the networks hold licenses to use one of our nation's most valuable resources, the broadcast channels. It is axiomatic that they have a duty to serve the public in the broadest possible fashion. To date, the SBCA has not opposed the plans of the networks to scramble their signals. The delivery of network signals to all Americans is possible via satellite and the networks must not stand in the way.

Any fears that the network affiliates may have about viewership dilution due to the importation of distant affiliates' signals are unfounded. It is our opinion and belief that where a viewer in a local community is able to receive the off-air signal of an affiliate, they will not pay the required subscription fees to receive the distant signal. This is due not only to the cost factor, but the fact that television viewers naturally prefer to watch the news and other programming carried on the local affiliate. And, as nearly all satellite systems are equipped with an A-B switch to allow the viewer to readily change from satellite antenna to broadcast antenna, viewing of all available local stations is easily accomplished.

Also, I would urge the Subcommittee to recognize that there are only 2,000,000 C-band satellite antennas installed today and less than 300,000 of those are equipped with the decoders needed for reception of the retransmitted distant signals. H.R. 2848 would sunset after 8 years. Even if sales levels were to double over the current level (to 500,000 systems per year), there would be only 6,000,000 satellite systems in place at the time this Bill would expire. In a market consisting of nearly 100,000,000 television homes, it is highly unlikely that any network affiliate would suffer as a result of the passage of H.R. 2848.

It is essential that legislation be enacted to make clear the right of home satellite television viewers to receive independent and network distant signals. Just as cable, in its infancy in 1976, needed enactment of the existing compulsory license, the direct broadcast industry must receive comparable consideration which will allow it to develop as a viable television delivery technology, capable of competing in the marketplace. Access to network and other programming must remain available to all Americans. H.R. 2848 assures that every television home, no matter where it is located, will be able to share in the entertainment, sports, news, and educational programming provided by the networks and independent superstations.

Earth Members

Advanced Scientific Products, Inc.
American Metal Spinning Ltd.
Amway Corporation
California Amplifier
Channel Master
Chaparral Communications, Inc.
Cincinnati Microwave Comm.
DH Satellite
DX Communications
Echosphere Corp.
Expanded Metal Corp.
Fortuna Communications
General Instrument Corp.
Hero Communications of FL, Inc.
Kaul-Tronics, Inc.
NEC Home Electronics
Norsat International, Inc.
Panasonic Industrial Co.
R.L. Drake, Co.
Satellite Television Tech. Int'l.
Sony Corp. of America
Toshiba America
Uniden Corp. of America
Winegard Company
Zenith Electronics Corp.

Software/Programmer Members

Amway Corporation
Canadian Satellite Comm. Inc.
Christian Broadcast Ntwk., Inc.
CommTek, Inc.
Disney Channel (The)
ESPN
Eastern Microwave, Inc.
Group W Satellite Comm.
Home Box Office, Inc.
Home Dish Only Satellite Network
Home Satellite Services
Home Sports Entertainment
NRTC (Nat'l. Rural Telecomm. Coop.)
Nat'l. Satellite Prog. Ntwk.
Netlink USA
Playboy Channel
SHOWTIME/THE MOVIE CHANNEL Inc.
Satellite Broadcast Network
Tempo Enterprises, Inc.
Turner Broadcasting Systems, Inc.
United Video

Space Members

COMSAT Corporation
GE Americom
General Instrument Corp.
Home Box Office, Inc.
Hughes Comm. Satellite Services
US Satellite Broadcasting (USSB)
Viacom International

Individual Members

Mr. Daniel M. Zinn
Mr. David L. Bondon
Mrs. Ruth Vollrath
Mr. Edward C. Allred
Mr. Harley W. Radin
Alpert & Associates
Beyond War
Comericom Cable, Inc.
Daniels & Asso., Inc.
Dorseys of Oshkosh, Inc.
Fofiel International
George A. Bossons, Consultants
HI-NET
Nat'l Center for Assn. Resources
National Satellite Antennas
Rainbow Satellite
TMG/INC.
X-Press Information Services

Retail/Distributer Members

AAA Antenna Services, Inc.
AEI Music Network Inc.
AEI Music Network Inc.
Accurate TV & Satellite
Action Earth - Satellite Corp.
Aer-Wave Systems, Inc.
Allman
Alpine Microwave
American Enterprises
American Television & Comm. Corp.
American Visual Concepts, Inc.
Antennas By John
Arc Cable & Comm., Inc.
Arc Satellite
Arizona Wholesale Supply Co.
AstroVision Satellite
B&J Electronics
B-J Supply Company
Barber's TV/Sat. Sales & Service
Bayonne Satellite Systems
Best Reception Systems, Inc.
Bill's Electronics
Blue Sky Enterprises
Bluefield Distributing Co.
Buchanan Satellite
C & H Electronics
C.A.S. Satellite Systems
CIELO Communications Inc.
CSS
Capitol Antenna Service
Capizzi Satellite Systems
Carpenter Radio Co.
Central Florida Satellite TV Sys.
Charlie's Electronics
Chris TV
Christenson Enterprises
Circuit Doctors, Inc.
Clearview Satellite
Comtec Satellite Comm.
Connolly's Satellite TV
Constellation Satellite
Consumer Satellite Sys. Inc.
Corner Rock Satellite
Couch's Electronics
Country Cable TV, Inc.
Cox Satellite Services
Cumberland Elect. Inc.
Custom Satellites
D&H Distributing Co. Inc.
DWF Company
Dahlstrom Construction
Daniels & Asso.
David Shipp Antennas
Davis Antenna Inc.
Delta Satellite Corp.
Denco Systems
Discount Satellite TV
Diversified Enterprises
Earth Systems
Eastern Company d/b/a Eastco
Echosphere Corp.
Electronic Systems
Electronics Etc.
Electrotex
Finger Lakes Satellite Inc.
First Carolina Satellite Dist.
Focii Satellite Co.
Foster Ranch Airport Elect.
Future Vision Satellite
Gill's Electronics
Global Satellite Inc.
Ground Plane Elect., Inc.
H&H Electrical Systems, Inc.
H. S. S.
HL Communications
Hal's Electronics Sales & Serv.
Hamblin Antenna Service Inc.
Hansen Video & Satellite
Harbor Lights
Harney Telephone Service
Hi Tech Satellite
High Frontier Dist.
Hitchcock Sales
Home Box Office, Inc.
Home Satellite TV
Hopewell Satellite
Hughes Expert TV Service Inc.
Hulsey & Hulsey, Consultants
Intel-Star Inc.
Invecom, Inc.
Iowa Satellite Dist.
J&K Enterprises
JC Smith Electronics
JSAT
Jersey Jim Towers TV
K&K Communications
KLH Satellite Systems
Keystone Arthur Telephone Co.
King's Antenna Service
L'N'A Satellite Systems
Lambert Satellite TV
LeMieux Electronics
Les TV
Lewis Communications
Little Ocmulgee Service Corp.
Madsat
Maidencreek TV & Appliance
Main Electronics Co.

Retail/Distributor Members - Continued

Maryland Microwave Services
McLean Satellite Systems
McMaster Antenna System
Mesters HBO
Micheal Electronics
Mid-Central Electronics
Mid-Michigan Home Entertainment
Mobile Audio
Modern Computor Sys. of N. Dakota
N. Central Satellite Antenna Sys.
NWS Corporation
National Satellite & Antennas, Inc.
National Satellite Communications
Neistadt Inc.
Network Communications
North American Satellite Dist. Inc.
North American Satellite Serv.
OmniVision
P & M Communications
P & R Satellite
P-N Junction
Pasley Satellite Center
Peerless Satellite Network
Pico Products, Inc.
Pine Ridge Electronics
Pioneer Rural Serv. Corp.
Price's Electronics & Const.
Puvalowski Home Entertainment
Radio Resources of NE
Ramsey & Son TV
Randolph Telephone Membership Corp.
Recreational Sports & Imports, Inc.
Regan Electronics
Rick Renfrow TV
Rite Stuff Systems (The)
Rural Nevada Satellite TV
SHOWTIME/THE MOVIE CHANNEL Inc.
Satellite Comm. Sys.
Satellite Engr. & Comm. Inc.
Satellite Headquarters
Satellite Receivers
Satellite Scanners
Satellite Scanners, Inc.
Satellite Service Inc.
Satellite Services of Cordele
Satellite Shop (The)
Satellite Specialists
Satellite Systems
Satellite Systems of Brevard
Satellite Systems, Inc.
Satellite TV
Satellite TV & Video
Satellite TV Consulting Serv.
Satellite TV Systems
Satellite Technology, Inc.
Satellite Television
Satellite Video
Satellite Video Service, Inc.
Satellite Vision, Inc.
Satellites West
Satisco - Satiscovision
Segers Electronics
Seward Electronics
Sights & Sounds
Signal Sources, Inc.
Sims TV & Electronics
Ski-A-Sat
Sky's the Limit
Sky-Tek Satellite
Son's Satellite Systems
Sound - TV Systems
Sound Installations
Star Com Distributing
Star Track
Starpath of Hardin County
Startech, Inc.
Stevie Satellite
Sunset Satellite
T & T Antenna Sales & Service
TV Hospital
TVCO Outlet, Inc.
Techniserv Co.
Tel-Sat TV Satellite Receivers
Thunderbolt Systems Inc.
Tiller Radio/TVRO/Kable Co.
Tri-County Microwave
Tri-Star Communications
USTV (Universal Sat. TV Co.)
United Satellite Corp.
Via Satellite Inc.
Video Kingdom
Wallace Satellites
Warren Supply Co.
Washington Electric
West Coast Sound Sys., Inc.
Western Iowa Services Coop.
Wilkerson & Associates
WiskonSan Satellite Sys., Inc.
Woodheat Associates
World Sat
Worldwide Satellite Entertainment
Wright Connection
Wright Tech. & Marketing, Inc.
Zimmerman's Service, Inc.

NETWORK AND INDEPENDENT

"SUPERSTATIONS"

CURRENTLY AVAILABLE ON SATELLITE

(11 - 19 - 87)

1. Network Affiliate Signals:

KUSA - Denver ABC
KCNC - Denver NBC
KMGH - Denver CBS
WABC - New York ABC
WBBM - Chicago CBS
WXIA - Atlanta NBC

2. Independent Broadcast Signals:

WTBS - Atlanta
WWOR - New York
WGN - Chicago
WPIX - New York
KTVT - Fort Worth
KDVR - Denver
KTV - Aspen

3. Public Broadcasting Signal:

KRMA - Denver

Mr. Kastenmeier. Without objection, your statement, in its entirety, together with its attachments and the other materials you offer will be accepted by the committee for the record.

[The information of Mr. Ellison follows:]

Satellite Broadcasting and Communications Association
of America

Officers
[illegible]

Directors
[illegible]

Staff
Vice President - Government Affairs General Counsel Mark C. Ellison
[illegible]

To: All Interested Parties

From: Mark C. Ellison, Vice President Government Affairs/General Counsel - SBCA

Re: Satellite Television Subscription Systems

Following are diagrams and information explaining the home satellite television market and showing how the systems work.

The first diagram shows the delivery of an unscrambled program. In it, the consumer merely needs a dish antenna and receiver. No decoder or authorization is required.

The second diagram depicts the delivery of distant broadcast stations (the so-called "superstations) to both cable and home satellite television viewers. In the cable system the distant signal is received either with a UHF or VHF off-air antenna or satellite antenna and retransmitted to the cable viewer via microwave and cable. A superstation delivered direct-to-home via satellite is received by the carrier on an off-air antenna and "uplinked" to a satellite. It is then "downlinked" by the home satellite viewer.

(All satellite delivered superstations are scrambled and are available through the subscription process shown in the third diagram.)

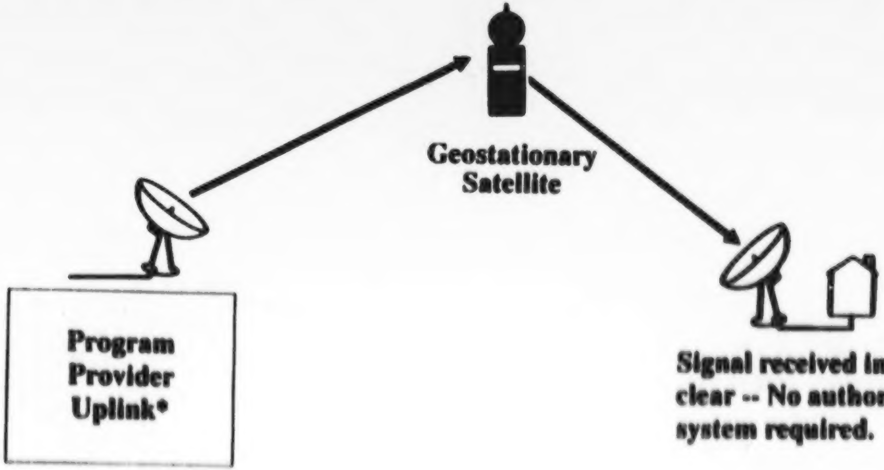
The third diagram demonstrates the authorization system for scrambled programming. As of February 26, 1988, there were 28 scrambled channels available via subscription. The attached "Satellite TV: Facts at a Glance" lists 26 of those services. The two additional services are superstations, KTLA and WSBK, carried by Eastern Microwave.

Under the subscription system, the home satellite dish owner selects the desired programming and calls a programmer or packager through an "800" number to order the service(s). The order is instantaneously entered and an authorization signal is transmitted via satellite to the home viewer's dish and descrambler. As noted, only one descrambler is required to receive any or all of the scrambled programs.

In addition to the diagrams and the Facts at a Glance, you will find attached a summary of program and package services and their respective retail prices.

If you have any questions about these materials or any aspect of home satellite television, please feel free to call the SBCA.

SATELLITE HOME TELEVISION
(Unscrambled Services)



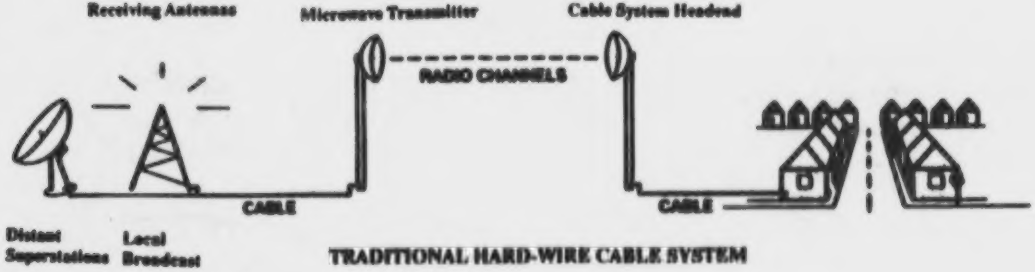
Geostationary Satellite

Program Provider Uplink*

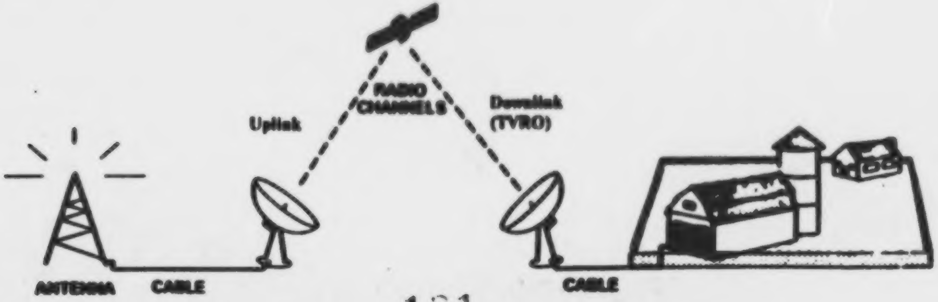
Signal received in the clear -- No authorization system required.

*There are currently about 100 unscrambled channels transmitted via satellite.

SUPERSTATION DELIVERY SYSTEMS

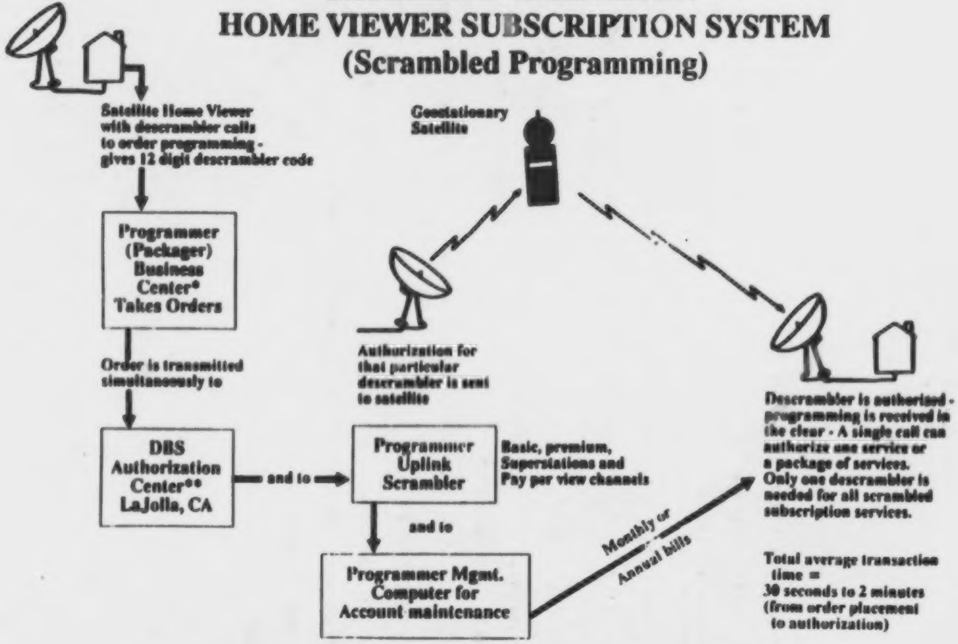

Receiving Antennas
Microwave Transmitter
Cable System Headend
RADIO CHANNELS
CABLE
CABLE
Distant Superstations
Local Broadcast

TRADITIONAL HARD-WIRE CABLE SYSTEM


RADIO CHANNELS
Uplink
Downlink (TVRO)
ANTENNA
CABLE
CABLE

HOME SATELLITE DELIVERY SYSTEM

SATELLITE TELEVISION
HOME VIEWER SUBSCRIPTION SYSTEM
(Scrambled Programming)



Satellite Home Viewer with descrambler calls to order programming - gives 12 digit descrambler code

Programmer (Packager) Business Center* Takes Orders

Order is transmitted simultaneously to

DBS Authorization Center LaJolla, CA**

and to

Programmer Uplink Scrambler

Basic, premium, Superstations and Pay per view channels

and to

Programmer Mgmt. Computer for Account maintenance

Monthly or Annual bills

Geostationary Satellite

Authorization for that particular descrambler is sent to satellite

Descrambler is authorized - programming is received in the clear - A single call can authorize one service or a package of services. Only one descrambler is needed for all scrambled subscription services.

Total average transaction time = 30 seconds to 2 minutes (from order placement to authorization)

*List of Programmers with business centers and information about packages and pricing attached.
**DBS Authorization Center is run and owned by users (programmers and packagers).

SATELLITE TELEVISION PROGRAMMERS AND PACKAGERS WITH BACK OFFICE DECODER AUTHORIZATION SYSTEMS

National Programming Service (1)

The Satellite Source (1)

NewChannels/Vision
Metrovision Satellite TV (2)

Tele-Communications, Inc. (2)

Times Mirror Satellite Service (2)

United Cable (2)

Delta Satellite Corp.(Skycable) (1)

General Instrument (3)

HBO (4)

NRTC "Rural TV" (1)

Netlink USA (5)

Satellite Broadcasting
Network - PrimeTime24 (5)

Showtime/The Movie
Channel (4)

Superstar Connection
United Video (5)

TEMPO Dev. Corp. (5)

---

(1) Packager Only

(2) Cable Operator - Pkg. available ony in franchise area

(3) Programming sold in conjunctioon w/ equipment

(4) Programmer/Packager

(5) Superstation Carrier/Packager

Satellite
Broadcasting &
Communications
Association
of America

Contact: Christine Gliozzo
(703) 549-6990

17 August 1987

SATELLITE TV: FACTS AT A GLANCE

- **Over 2 million home satellite dish owners (12/31/86)**
- **402,912 decoders in distribution (8/15/87)**
- **22 Services available by subscription:**
  - American Exxxtasy
  - CNN
  - Cinemax
  - HBO
  - Headline News
  - SelecTV
  - SHOWTIME/THE MOVIE CHANNEL Inc. (2)
  - Viewer's Choice (PPV Service)

  - Netlink USA - (Mid-September)
    - KUSA - Denver (ABC)
    - KCNC - Denver (NBC)
    - KMGH - Denver (CBS)
    - KRMA - Denver (PBS)
    - KDVR - Denver (Ind)
    - KSPN - Aspen (Ind)

  - PrimeTime 24
    - WABC - New York (ABC)
    - WBBM - Chicago (CBS)
    - WXIA - Atlanta (NBC)

  - Superstar Connection
    - WGN (Chicago)
    - KTVT (Fort Worth)
    - WOR (New York)
    - WPIX (New York)

- 9 Services to encode in 1987: *
  - CBN
  - Disney
  - Lifetime
  - MTV
  - Nickelodeon
  - Nostalgia
  - USA Network
  - VH-1
  - WTBS

- The majority of these services are currently test scrambling.

- Approximately 100 unscrambled services still available to dish owners.

- 74 audio program services available.

YEARLY BREAKDOWN IN DISH SALES

- 1980: 4,000 - 6,000
- 1981: 27,000 - 40,000
- 1982: 100,000 - 160,000
- 1983: 250,000 - 330,000
- 1984: 470,000 - 560,000
- 1985: 720,000 - 750,000
- 1986: 215,000 - 240,000

***1987**

***Monthly Breakdown:**

January - 23,000
February - 21,000
March - 22,000
April - 19,000
May - 17,000
June - 16,000
July - 18,000

1986/87 MONTHLY SALES OF DECODERS

	JAN 87	FEB	MAR	APR	MAY	JUN	JUL	*TOTAL TO DATE
Authorized Decoders	14,341	13,851	19,274	21,543	15,336	14,157	18,824	201,874
Service Subscriptions	55,581	52,006	91,746	103,918	95,261	87,707	141,54	3942,142
Cumulative Ratio of Subs/VCII	3.5	3.5	3.7	3.8	4.3	4.4	4.7	N/A

*Includes previous monthly totals prior to December 1986.

****Approximately 100 unscrambled services available to dish owners:**

- **ABC Network**	12[T1]	10[T2]
- **Alaska Satellite TV Project** Local & Network Programming	24[F5]	
* **America's Shopping Place** TV Shopping	11[W5]	
- **America's Value Network** 24 hour shopping	05[F4]	
- **American Christian TV (ACTS)** Southern Baptist Convention	15[S1]	
- **American Movie Classics** Classic American movies	10[F4]	
- **Armed Forces Satellite Network** Ntwk. & independent prog. for military	22[F2]	
- **Arts & Entertainment**	24[F3]	
- **Black Entertainment TV**	20[F3]	
- **Boresight** TVRO industry news, Thurs., 9pm (E)	01[W5]	
- **Bravo** Cultural service, movies	02[F4]	
- **C-Span** Live, taped coverage of U.S. House	13[G1]	
- **C-Span II** Live, taped coverage of U.S. Senate	08[F4]	
- **Cable Value Network** TV Shopping	12[F3]	
- **Caravan of Values** 1am to 5pm (E)	09[F4]	
- **Caribbean Superstation** Variety (24 hours)	23[W5]	
- **CBC (Atlantic/North)** Canadian Brdcst. feed to Atl./Mt. Time	19[AD]	11[AD]
- **CBMT Montreal** Canadian Brdcst. Co. feed to Eastern Time	20[AD]	
- **CBS Network (West)** 4 other feeds as well	15[T1]	

- Christian Television Network	05[S1]	
Religious Programs (24 hours)		
- Consumer Discount Network 1 & 2	20[F4]	24[F4]
TV shopping		
- Country Music TV	13[T3]	
Country music videos		
- Discovery Channel, The	22[G1]	
Family entertainment, education & specials		
- Disney Channel, The (East/West)	04[G1]	24[G1]
Family entertainment		
- Eternal Word TV	18[F3]	
Catholic programming		
- Financial News Network/	04[F3]	
SCORE	07[F1]	
Financial/sports review		
- Fox TV Network		
East 7-10 pm	01,24[T1]	
West 10 pm - 1 am	14[T1]	
- Galavision	20[G1]	
Spanish programming		
*** Gospel Music Network**	03[F4]	
- Health Info. Network	09[S1]	
1-3 pm (E) weekdays		
- Hispanic Broadcasting Network	18[W4]	
News in Spanish, Mon-Fri, 6:30pm (E)		
- Hit Video USA	18[F4]	
'Round-the-clock video		
- Home Shopping Network 1 2	22[F3]	01[F4]
Shop-by-phone, 24 hours		
- Home Sports Ent. (Houston)	11[F4]	
Astros, Rockets		
- Home Team Sports	22[F4]	
Baltimore, Washington pro/am sports; Orioles, Bullets, Capitals		
- House of Commons (English)	24[AD]	
Parliamentary coverage		

- House of Commons (French) Parliamentary coverage	16[AD]
* Inspirational Network Religion	17[G1]
- International Television Net. Syn. programming from Australia & Europe	19[W4]
- JISO (Japanese) Feed from U.S. to Asia	13[W4]
- KDVR-Ind. - Denver	20[F1]
- KFMB, San Diego CBS affiliate	04[M1]
- KSPN-Ind. - Aspen	24[F1]
- Learning Channel, The	02[F3]
- Liberty Broadcasting Network Religious programming	07[F4]
- Lifetime Health, crafts, cooking, exercise, interview	17[F3]
- Lifeway TV Network Shopping	21[S1]
- Madison Square Garden (NY) Sports, pro & amateur, entertainment	06[F4]
- MuchMusic Music videos	06[AD]
- Music Television (MTV) Rock videoclips, concerts	17[G3]
- Nashville Network, The Country entertainment, interview, sports	02[G1]
* National Christian Network Religious Programming	06[W4]
- National Jewish TV Jewish Programming	14[F4]
- National Shopping Club 24 hr. TV shopping	23[G3]
- NBC Network (East)	08[F1]
- NCN Religious programming	06[W4]
- New England Sports Channel, The	23[F4]

- New England Sports Network Red Sox, Bruins	13[F4]	
- Nickelodeon (West/East) Ed/entertain. children's prog. (24 hrs.)	04[F4]	01[F3]
- Nostalgia Channel Old-time TV, films, news	21[F4]	
* Peace Channel, The	24[W4]	
- Playboy Channel Adult entertainment	24[F4]	
- Prime Ticket Sports Southern California	07[F1]	20[F4]
- Pro Am Sports Network Mich., Ohio, Ind., Detroit Tigers	08[W5]	
- PBS (A) Educational	15[W4]	
PBS (B) Educational	17[W4]	
PBS (C) Educational	21[W4]	
PBS (D) Educational	23[W4]	
* QVC Network	08[F3]	
- Rock Christian Network Music videos, religious, 24 hrs. (English & Spanish)	03[F4]	
- Satellite Show, The TVRO news program, Tues 9pm (E), Sat 12pm (E)	03[W5]	
- Shop-At-Home TV shopping, 18 hours daily	15[F4]	
- Silent Network, The Programming for the deaf	23[F4]	
- Sky Merchant TV shopping	11[G3]	
- Sports Channel NY sports area	12[F4]	
- SportsVision (Chicago) White Sox, Bulls	09[F4]	
- TelShop TV Shopping	06[F4]	
- Tempo Television Variety	06[F3]	

- Three Angels Broadcasting Religious	17[F1]	
- Travel Channel	16[F3]	
- Trinity Broadcasting Network Religious	03[F3]	
- University Network Religious, Dr. Gene Scott	02[W5]	
- Univision	06[G1]	
- USA Network (East/West) Variety	21[G1]	09[F3]
- Video Hits-1 (VH-1) Music videoclips	15[F3]	
- Weather Channel, The 'Round-the-clock weather	19[F3]	
- Wold Satellite Television Net. Syndicated programming	23[T1]	
- Worldwide Television Net. European news feeds 11:45 am (E) weekdays	16[F1]	
- XEW, Mexico City	14[M1]	
- XHDF, Mexico City	08[M1]	
- XHITM, Mexico City	02[M1]	

*New services

Chart courtesy of Satellite TV Week

18 AUGUST 87 Page 1

CH/SAT	AUDIO PROGRAM SERVICES	FMT	LEFT	RIGHT
22(F2)	**AFRTS** Variety, News, Sports	M-N	6.1	
23(F2)	**SBCA Information Channel** **(North America One)** TVRO Call-in Variety	M-W	6.2	
07(G2)	**Supermarket Radio Network**	M-N	5.14 5.3	
03(F4)	**Inspirational Music Service**	DS-N	5.58	5.76
07(F4)	**Puerto Rico Station (Spanish)**	M-N	5.41	
21(F4)	**Jazz America's**	M-W	6.2	
09(T1)	**Country Music**	MX-N	5.58	5.94
04(AD)	**CFNY-FM** - Toronto	DS-N	5.41	5.58
05(AD)	**CBC Radio** - French	DS-N	5.41	5.58
06(AD)	**Background Music**	M-N	7.38	
06(AD)	**CKO-AM** - Toronto	N-N	8.145	
08(AD)	**CFHI-FM** - Toronto	M-W	6.8	
11(AD)	**CBC Radio** - Toronto	M-N	6.17	
14(AD)	**CKAC-AM** - Montreal	M-N	5.76	
14(AD)	**CITE-FM** - Montreal	DS-N	6.17	6.48
15(AD)	**CBC Radio** - French	DS-N	5.41	5.58
15(AD)	**Classical**	M-N	6.17	
16(AD)	**CBC-FM** - French Classical	DS-N	5.41	5.58
16(AD)	**CBC-FM** - English Variety	DS-N	5.76	5.94
17(AD)	**CBC Radio** - English/Indian Variety	M-N	6.17	
18(AD)	**CIRK-FM** - Edmonton	MX-W	6.17	
18(AD)	**CKO** - Alberta **News**	M-W	6.8	
19(AD)	**CBC Radio** - English/Indian	M-N	6.17	
20(AD)	**CBC Radio** - English/Indian	M-N	6.17	
21(AD)	**CKNM-FM** - Yellowknife, NWT	M-W	5.41	
22(AD)	**CBC Radio** - English Classical Jazz	DS-N	5.76	5.96

18 AUGUST 87 Page 2

CH/SAT	AUDIO PROGRAM SERVICES	FMT	LEFT	RIGHT
22[AD]	CFMI-FM - New Westminster BC	MX-W	6.8	
23[AD]	CKRW-AM - White Horse, Yukon	M-W	5.41	
23[AD]	CHON-FM - White Horse	M-W	5.41	
23[AD]	VOCM-AM - St. Johns	M-W	6.17	
24[AD]	CBC-FM - French Classical	DS-N	5.41	5.58
24[AD]	CBC-FM - English Variety	DS-N	5.76	5.94
03[S1]	FM America	M-N	6.3	
03[S1]	KSFI-FM Easy listening	M-W	6.2	
05[S1]	WCIE-FM Religious	DS-N	5.58	5.76
07[S1]	KNX-FM - Los Angeles MOR	M-N	5.58	
07[S1]	KSRO-AM - Los Angeles	M-N	5.76	
15[S1]	WCCO-AM - Minneapolis	M-N	6.2	
17[S1]	K-SAT TVRO Talk Show	M-N	6.8	
21[S1]	LIN Religious 7am - 7pm	M-W	6.2	
21[S1]	Yesterday USA 7pm - 7am	M-W	6.2	
*06[W5]	Religious in Spanish	M-N	6.3	
18[W5]	MUZAK Contemporary Music	M-N	5.4	
18[W5]	MUZAK Music Service	M-N	5.58	
18[W5]	MUZAK Music Service	M-N	5.76	
18[W5]	SBN Sheridan Broadcasting Net. Soul	DS-N	7.38	7.56
20[T3]	USA Radio Network News, Religious	M-N	6.2	
03[F3]	Contemporary Christian Music	DS-N	6.12	6.3

18 AUGUST 87 Page 3

CH/SAT	AUDIO PROGRAM SERVICES	FMT	LEFT	RIGHT
04(F3)	KKGO-FM (LA)	DS-N	5.58	5.76
	Jazz			
04(F3)	Cable Radio Network	M-N	5.94	
	MOR Music			
04(F1)	KILA-FM	DS-W	6.3	6.48
06(F3)	Country Music	DS-N	5.4	5.94
06(F3)	Contemporary Music	DS-N	5.58	5.76
06(F3)	Music of '50s & '60s	M-N	6.435	
06(F3)	Rhythm & Blues	DS-N	7.38	7.56
06(F3)	Comedy 24 hours	M-N	7.695	
06(F3)	Big Bands of the '40s	M-N	7.785	
06(F3)	In Touch -	M-N	7.875	
	Reading to blind & disabled			
12(F3)	WCCO-AM - Minneapolis	M-N	6.2	
16(F3)	Sagamore "Native Cultures"	M-N	6.2	
16(F3)	WMWK-FM - Spanish	M-W	6.2	
03(G1)	MOR	M-N	5.94	
	Music Service			
03(G1)	WMFT-FM	D-N	6.3	6.48
	Classical			
07(G1)	CNN	M-W	6.3	
	Radio News Service			
08(G1)	CNN	M-W	6.3	
	Radio News Service			
09(G1)	ESPN	M-W	6.2	
	Prog. Changes 6:30 & 9:30 am			
11(G1)	Nice & Easy/Music Over Amer.	DS-N	7.38	7.56
11(G1)	Cable Jazz	DS-N	5.94	6.12
11(G1)	Contemporary Christian	DS-N	6.30	6.48
15(G1)	WQXR-FM (NYC) Classical Music	DS-N	6.3	6.48
15(G1)	Greek Network	M-N	7.335	
	Music, news, specials, sports			
15(G1)	Italian Network	M-N	7.425	
	Music, news, specials, sports			

*XPDR.	*AUDIO PROGRAM SERVICES	TYP.	*LEFT	RIGHT
17(G1)	Religious programs News	M-W	6.2	
24[F5]	KSKA-FM Public Radio	DS-N	7.38	7.56

DS - Discrete
M - Monaural

MP - Multiplex
MX - Matrix

N - Narrow
W - Wide

*New services

**Chart courtesy of Satellite TV Week

25 August 87

SBCA HOME SATELLITE SUBSCRIPTION STATISTICS
By Programmer/Packager

PROGRAMMERS	START DATE	SYSTEM	A La CARTE PRICE FOR SERVICE
American Exxxtasy 800/824-2454	Aug 86	VideoCipher II	$150/6 months $240/year $480/2 yrs-3rd free
BET 202/337-5260	N/A	N/A	N/A
CNN 800/843-9266	24 Aug 87	VideoCipher II	$15 per year, $34.95 incl. CNN/Headline News -- also available in package form.
CNN/Headline News 800/843-9266	1 Jul 86	VideoCipher II	$25 per year -- also available in package form.
Discovery Channel 301/577-1999	No formal announcement.	N/A	Available in package form only.
Disney Channel 818/842-2877	End of 87	VideoCipher II	N/A
ESPN 800/422-9000	3 Aug 87	VideoCipher II	$24.96/year -- also available in package form.
HBO/Cinemax 800/HBO-DISH (can also order CNN/Headline News w/same call)	15 Jan 86	VideoCipher II	$12.95/month 1 serv. $116.55/year 1 serv. $19.95/month both $179.55/year both $5.40/month (after $50 dealer rebate) w/purchase of VCII & 1 yr subscription to HBO/Cinemax

PROGRAMMERS	START DATE	SYSTEM	A La CARTE PRICE FOR SERVICE
Learning Channel 202/331-8100	No formal announcement.	N/A	Available in package form only.
Lifetime 212/719-8900	Dec 87	VideoCipher II	Available in package form only.
MTV 800/422-9000	Dec 87	VideoCipher II	Available in package form only.
Nashville Network 615/889-6840	N/A	N/A	Available in package form only.
Nickelodeon 800/422-9000	Dec 87	VideoCipher II	Available in package form only.
Nostalgia Channel 800/582-2582	End of 87	VideoCipher II	N/A
SelecTV 800/DECODE1	Oct 86	VideoCipher II	$25.50/3 months ($8.50/month) $95.40/year ($7.95/month)
SHOWTIME/THE MOVIE CHANNEL 800/422-9000	27 May 86	VideoCipher II	$10.95/month 1 serv. $120/year 1 serv. $16.95/month both $186/year both
USA Network 800/422-9000	31 Aug 87	VideoCipher II	Available in package form only.
Viewer's Choice 800/422-9000 (PPV Service)	Nov 86	VideoCipher II	Approx. $4.95/per viewing. (Additional charges for non-dir Viacom Satellite Network retail subscribers.)

PROGRAMMERS	START DATE	SYSTEM	À La CARTE PRICE FOR SERVICE
VH-1 800/422-9000	Dec 87	VideoCipher II	Available in package form only.
WOR 800/331-4806	Jun 86	VideoCipher II	Available in package form only.
WTBS 404/951-9510	5 Oct 87	VideoCipher II	Currently available only thru Tempo.

* N/A denotes "not announced".

CLEARINGHOUSES	SERVICES	PRICE
Consumer Satellite System National Programming Serv. 800/444-3474	Base Pak - (CNN, CNN Headline News, WGN, KTVT, WPIX, WOR)	$65.00/year
	Premium 1 - (Base Pak + HBO/ Cinemax)	$242.55/year
	Premium 2 - (Base Pak + SHOWTIME/ THE MOVIE CHANNEL)	$249.00/year
	Multichannel - (includes SHOWTIME's 12 service-pkg. + SHOWTIME/TMC)	$248.00/year
	ESPN	$26.00/year
The Satellite Source 800/367-1234	American Exxxtasy	$135/6 months $225/1 year
	PrimeTime 24	$50/year
	Superstar Connection	$44/year
	HBO & Cinemax	$179/year
	9 basics package (ESPN, CNN, Headline News, CBN, USA Network, WGN, KTVT, WOR, WPIX)	$120/year
	HBO/Cinemax 9 basics	$299/year
	HBO/Cinemax 9 basics + VideoCipher II	$619/year
	SHOWTIME/TMC	$186/year

CABLE OPERATORS	SERVICES	PRICE
*NewChannels 800/458-0050 (NY, PA, AL, NJ, NC, SC, LA & FL only)	Pac 1 - (Superstar Connection, WTBS, CNN, Headline News)	$4.00/month with current subscription to a pay service. $6.00 stand-[illegible]

CH/SAT	AUDIO PROGRAM SERVICES	FMT	LEFT	RIGHT
18[W5]	SBN Sheridan Broadcasting Net. Soul	DS-N	7.38	7.56
20[T3]	USA Radio Network News, Religious	M-N	6.2	
03[F3]	CBN Christian Contemporary	DS-N	6.12	6.3
04[F3]	KKGO-FM (LA) Jazz	DS-N	5.58	5.76
04[F3]	Cable Radio Network Adult Contemporary Music	M-N	7.335	
06[F3]	Country Music	DS-N	5.4	5.94
06[F3]	Adult Contemporary	DS-N	5.58	5.76
06[F3]	Music of '50s, '60s & '70s	M-N	6.435	
06[F3]	Rhythm & Blues	DS-N	7.38	7.56
06[F3]	Comedy 24 hours	M-N	7.695	
06[F3]	Big Bands of the '40s	M-N	7.785	
06[F3]	In Touch - Reading to blind & disabled	M-N	7.875	
12[F3]	WCCO-AM - Minneapolis	M-N	6.2	
16[F3]	New York Italian Multi-Ethnic Programming	M-N	6.2	
03[G1]	MOR Music Service	M-N	5.94	
03[G1]	WMFT-FM Classical	D-N	6.3	6.48
07[G1]	CNN Radio News Service	M-W	6.3	
09[G1]	ESPN Prog. Changes 6:30 & 9:30 am	M-W	6.2	
11[G1]	Nice & Easy Music Over America	DS-N	7.38	7.56
11[G1]	Cable Jazz	DS-N	5.94	6.12
11[G1]	CBN Religious	DS-N	6.30	6.48
15[G1]	WQXR-FM (NYC) Classical Music	DS-N	6.3	6.48
15[G1]	Greek Network Music, news, specials, sports	M-N	7.335	
15[G1]	Italian Network Music, news, specials, sports	M-N	7.425	
17[G1]	Religious programs News	M-W	6.2	
07[F1]	KKGO-FM Jazz & Movie Music	M-N	5.58	
07[F1]	KNX-FM - Los Angeles MOR	M-N	5.76	
24[F5]	KSKA-FM Public Radio	DS-N	7.38	7.56

DS - Discrete	MP - Multiples	N - Narrow
M - Monaural	MX - Matrix	W - Wide

*New services
**Chart courtesy of *Satellite TV Week*

Mr. KASTENMEIER. Now, I would like to call on Mr. Bliss.

Mr. BLISS. Mr. Chairman, members of the subcommittee, thank you for this opportunity to appear before you today and present the views of the satellite carriers of the superstations concerning this bill. Luckily, I had a large breakfast, so I will be able to talk a long time.

As stated by the Chairman, I am the chief operating officer of United Video, which is a satellite carrier for WGN, WPIX, and KTVT. I have been in this business virtually all of my life, having started working for my dad in the cable business when I was a teenager.

I am appearing today on behalf of United Video, Southern Satellite and Eastern Microwave. We are the Federal Communications Commission's authorized satellite resale carriers which deliver the superstations WGN from Chicago, WPIX from New York, KTVT from Dallas, WTBS from Atlanta and WWOR from New Jersey to viewers throughout the United States.

To add a little perspective, prior to 1976 all distant independent stations were delivered to cable systems by terrestrial microwave and there were what were then called superstations. They were not as super as they are now, but they were around.

Starting in 1976 with TBS, superstations went on the satellite, followed closely by WGN, then WOR and, a couple of years later, by WPIX and KTVT. Over 40 million cable homes now enjoy superstation programming which is virtually all the cable homes, most of them getting one or more of the superstations.

During the first ten years of satellite service, the three original carriers served the cable television industry almost exclusively using unscrambled signals. Scrambling became necessary because of the satellite signal piracy problem. Programming intended and paid for by legitimate paying customers was being improperly intercepted and used by businesses who were not paying for the services.

In our specific case, we found that shortly after we scrambled, we acquired about 1,000 new customers who just happened to start taking the service.

The demand, by the private dish industry, representing approximately 2 million TVRO backyard dish owners for the availability of the superstations, was intensive when we announced that we would scramble. At the present time, there are over 195,000 TVRO dish owners who subscribe to and pay for one or more of the services delivered by the superstation carriers.

These services are available either ala carte or as part of a package, such as United Video superstation connection package, which is a package of five different services.

I would like to emphasize and make it abundantly clear that it is our position that our service to TVRO subscribers is covered by the Copyright Act and is thus not an infringement of copyright. I would like to add, at this point, that without the compulsory license, as defined in the copyright act, the three carriers would cease to exist. There is absolutely no question in my mind that we would unequivocally go out of business and deprive 40 million cable owners, plus the 2 million TVRO users of these services.

Clearly, however, without clarification, we the carriers will face the potential financial exposure which could result from copyright litigation. I might also note that the substantial litigation that has gone on in the past, spoken of by Mr. Boggs, has primarily been between the copyright owners trying to figure out how to split up the pie.

Last year, a virtually identical bill, H.R. 5126, was introduced and Ed Taylor spoke before this subcommittee on behalf of the carriers. At that point in time, we suggested several changes to the bill. We are now coming before this committee, suggesting that the bill be accepted as is, because the last bill did not get anywhere because I think people kept trying to change it.

One of the changes that has been suggested or is being floated around is the white area proposal. I think the white area proposal is sort of communism. It sounds kind of good in theory but it just will not work.

For all of the foregoing reasons, the carriers unanimously and wholeheartedly support H.R. 2848 without clarification and without reservation.

Thank you for your attention and I would be pleased to answer any questions.

[The statement of Mr. Bliss follows:]

④

TESTIMONY OF ROY L. BLISS, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER OF UNITED VIDEO, INC., ON BEHALF OF UNITED VIDEO, INC., SOUTHERN SATELLITE SYSTEMS, INC., AND EASTERN MICROWAVE, INC., CONCERNING THE SATELLITE HOME VIEWER COPYRIGHT ACT OF 1987, H.R. 2848, BEFORE THE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES AND THE ADMINISTRATION OF JUSTICE OF THE HOUSE COMMITTEE ON THE JUDICIARY, ON NOVEMBER 19, 1987.

TESTIMONY OF ROY L. BLISS

Mr. Chairman and distinguished Members of the Subcommittee, I thank you for the opportunity to appear before you today to present the views of the satellite carriers of the "Superstations" concerning the Satellite Home Viewer Copyright Act of 1987, H.R. 2848.

I am the Executive Vice President and Chief Operating Officer of United Video, which is the satellite carrier for WGN-TV, WPIX, and KTVT. I began my career in cable television at a young age by working in my dad's cable systems in Wyoming. I worked for a manufacturer of cable equipment while in college and in 1969 joined a company which is now United Cable. I spent several years in cable management and was later appointed General Manager of the Microwave Division, and subsequently became Vice President of United Video which was then a division of United Cable. I am appearing today on behalf of United Video, ("United Video"), Southern Satellite, and Eastern Microwave, ("Eastern Microwave").

United Video, Southern Satellite, and Eastern Microwave are the Federal Communications Commission authorized satellite resale carriers which deliver Superstations WGN Chicago, WPIX New York, KTVT Dallas, WTBS Atlanta, and WWOR New Jersey, to cable television systems throughout the Untied States. Prior to 1976, all distant independent television stations were delivered to cable systems by terrestrial microwave carrier. However, this mode of delivery was limited by technological and economic factors to regional distribution usually covering only three or four states for each signal. Satellite distribution began in 1976 with WTBS, followed by WGN, WWOR, WPIX and KTVT. These signals then became the "Superstations" of the cable industry. The Superstations proved to be an extremely popular cable service and are now distributed to millions of homes on a nationwide basis, 24 hours every day. Over forty million cable homes now enjoy Superstation programming, which represents over 95% of all cable homes served by over 14 thousand cable and SMATV systems.

During the first ten years of satellite service, the three original carriers served the cable television industry delivering unscrambled signals throughout the country. However, during the last two years, each of the carriers has encoded or "scrambled" its signal as a means of controlling its distribution network. Scrambling became necessary because of the satellite signal piracy problem. Programming intended and paid for by legitimate paying customers was being improperly intercepted and used by businesses who were not paying for the service. Carriers were losing hundreds of thousands of dollars to commercial establishments. For this reason, the carriers were forced to scramble the signal transmission.

The three carriers had all received requests to deliver the Superstations to private TVRO dish owners. This is a market which all three had desired to serve but did not initially serve because of technical and legal uncertainties. Because the Superstations are FCC licensed television stations, specific copyright considerations apply to them that are not applicable to other cable satellite services. However, the demand by the private dish industry, representing approximately two million TVRO or "backyard" dish owners, for the availability of the Superstations was intensive. Availability of an economic scrambling system resolved the technical questions and ultimately the carriers interpretation of the legal issues prompted them to respond to this demand and one-by-one during this past year the carriers began to deliver their services to the TVRO subscribers. At the present time, there are over one hundred ninety-five thousand (195,000) TVRO dish owners who subscribe to one or more of the services delivered by the Superstations. These services are available either as a single channel service ("a la carte") or as part of a package with other channels (such as United Video's "Superstar Connection").

The decision to respond to the nationwide TVRO dish owner demand for television programs available to cable subscribers and urban residents, did not of itself in any way resolve the legal issue pertaining to copyright infringement. However, it must be emphasized and made abundantly clear, that it is the carriers' position that their service to TVRO subscribers is covered by Section 111(a)(3) of the Copyright Act of 1976, Title 17 of the United States Code, and is thus not an infringement of copyright. Section 111(a)(3) was written and enacted in 1976 before the first satellite transmission of any television programming, and certainly before delivery of such services to TVRO subscribers. Thus, for obvious reasons, there is no specific reference to TVRO viewer service anywhere in the Copyright Act of 1976. There are those who are opposed to the concept of direct service to TVRO owners and take the position that because TVRO service is not mentioned in the Copyright Act, it is not permissible. Clearly, without clarifying legislation, the carriers will face the potential financial exposure which could result from copyright litigation and will have an obvious adverse effect not only on the carriers but also on the general viewing public who wish or need to receive their television programming through private TVRO dishes.

The private dish industry and those who serve it, such as these carriers, deserve the right to equal service without the threat of unnecessary and unfounded litigation. The carriers agree that the extension of a statutory license to home viewers is the reasonable and responsible solution. For that reason, the carriers wholeheartedly and unequivocably support the Satellite Home Viewer Copyright Act of 1987.

In 1986, a virtually identical bill, H.R. 5126, was introduced. At a hearing before this same subcommittee held on August 7, 1986, the carriers testified in support of that bill. In supporting that bill, the carriers made a number of suggestions which they believed would result in a better bill; however, the bill did not reach the House floor. It is the carriers' belief that the greatest chance for the ultimate success for H.R. 2848 is for those who support the concept of the legislation to support the bill in its present form, notwithstanding improvements which they believe could be made. It has been reported that certain dissenters to the bill will seek to add third party distribution requirements, pricing regulation, "white area" restrictions and other controversial provisions. While each of the "improvements" might benefit a small segment of the industry or serve the private interests of a competing industry, the inclusion of any one of them would have the effect of neutralizing the goal of the bill which is "unrestricted service to the TVRO viewer." A bill which unnecessarily restricts the carriers' ability to deliver the Superstation service to TVRO subscribers will have the effect of denying that service to the very public which it is designed to serve.

A striking example of this result is illustrated by the so-called "white area" proposal. Under this proposal, the Superstations could be delivered only to TVRO subscribers living in areas that do not receive non-network television stations. Such a proposal would limit the number of TVRO viewers who could receive the Superstations. Many would lose the right to receive any of the Superstations. Since, unlike network affiliates, the Superstations do not simultaneously duplicate any specific block of programs of any particular local independent stations, a white area restriction would confer an unwarranted and unfair burden on the carrier, affording the local station monopolistic protection against distant signals. In many instances, it would result in limiting rural viewers to a single independent station foreclosing to these viewers an opportunity to choose among a number of stations' offerings. This would be but another example of relegating TVRO viewers to "second class television viewer status." Finally, the carriers believe that any attempted implementation of such a restriction could be a technological nightmare, if not an impossiblity.

For all of the foregoing reasons, the carriers support H.R. 2848 without qualification and without reservation. I hope that I have effectively conveyed to this Subcommittee the enthusiastic support of the satellite superstation carriers for the purposes designed to be achieved by this Bill.

Thank you for your attention.

Roy L. Bliss

for

United Video, Inc.
Southern Satellite Systems, Inc.
Eastern Microwave, Inc.

Mr. **Kastenmeier**. Thank you.

Before I really get into questioning, I would just like to ask a couple of things for clarification. WGN is not scrambled?

Mr. **Bliss**. It is scrambled.

Mr. **Kastenmeier**. It is?

Mr. **Bliss**. All five of these are scrambled.

Mr. **Kastenmeier**. I thought one of them was not listed by Mr. Ellison as being scrambled.

Mr. **Ellison**. I believe I got them all in that list, yes.

Mr. **Kastenmeier**. There have been superstations which have become non-superstations, have there not? When you gave the history of the years, WTBS in 1976 followed by WGN, WOR and WPIX and so forth, were there not other superstations, one or two on the west coast, but then they dropped out?

Mr. **Bliss**. There was one west coast, San Francisco, station, that lasted about a year.

Mr. **Kastenmeier**. Thank you.

I would like to call on our last witness, Ms. Kazie Metzger. Ms. Metzger.

Ms. **Metzger**. Thank you, Mr. Chairman, and members of the subcommittee. My name is Kazie Metzger and I am the President of Satellite Broadcast Networks. We are known in the industry as SBN.

I would also like to submit for the record some written questions and answers and a glossary of terms.

[The information of Ms. Metzger follows:]

Tel. (212) 758-1180
Telex 221313 YPC UR

RADIE METZGER
President

280 Madison Avenue • Suite 608 • New York, N.Y. 10016

H.R. 2848
Q & A

TABLE OF CONTENTS

1. Why is H.R. 2848 necessary?
2. Who supports H.R. 2848?
3. How many companies are offering broadcast television stations to dish owners by satellite?
4. What impact does the NBC and TCI/Netlink agreement have on H.R. 2848?
5. Why shouldn't companies who retransmit broadcast programming negotiate for the right to retransmit it?
6. Does the FCC have any public policy on these matters?
7. Why does H.R. 2848 have a grandfathering clause?
8. Why should networks be included in H.R. 2848?
9. How many home satellite dish owners cannot receive network programming off-air?
10. Doesn't cable extend the reach of off-air network broadcasts sufficiently to cover most of America?
11. What have the networks done to reach all American households?
12. Don't network affiliates have the exclusive right to distribute network programming in their areas?
13. When will the network satellite feeds be scrambled?
14. What will the impact of H.R. 2848 be on the networks?
15. What will the impact of H.R. 2848 be on network affiliates?
16. What will the impact of H.R. 2848 be on copyright holders other than the networks and their affiliates?

H.R. 2848
Q & A

1. Why is H.R. 2848 necessary?

   Millions of rural Americans are in danger of losing access to network and independent broadcast television given the current controversy surrounding the rights of satellite common carriers to sell broadcast programming to home dish owners. Despite the fact that this programming is indisputably available through satellite common carriers to cable subscribers under the Copyright Act of 1976, considerable debate still exists with respect to the sale of the same programming by the same carrier companies to home dish owners.

   H.R. 2848 will clarify and confirm Congress' desire to foster distribution of broadcast television throughout the country, while providing compensation of all affected copyright holders. The legal certainty H.R. 2848 will bring will end the current discrimination against both rural America and the dish industry and ensure that more viewers will receive programming, more compensation will be paid to copyright holders and more satellite equipment will be sold.

2. Who supports H.R. 2848?

   The Motion Picture Association of America, the Satellite Broadcasting and Communications Association of America and the National Cable Television Association have repeatedly and expressly endorsed the Bill. Those organizations alone represent copyright owners, manufacturers and providers of communications satellites, satellite television programmers, home satellite dish equipment manufacturers, distributors and retailers, and cable operators. In addition, individual businesses who addressed The Senate Subcommittee on Communications such as, Turner Broadcasting, TCI, Amway and the National Rural Telecommunications Cooperative, all supported H.R. 2848 and urged the Senate to introduce companion legislation.

3. How many companies are offering broadcast television stations to dish owners by satellite?

   Satellite Broadcast Networks Inc. currently provides three network affiliate stations from three cities (New York, Chicago and Atlanta) to home dish owners for a subscription of $49.95 per year.

TEMPO Development Corp. offers WTBS, USA Network, and WWOR on an annual subscription basis for $19.95 each, 2 for 28.95, and 3 for $37.95.

United Video/Superstar Connection offers four independent broadcast stations, WGN (Chicago), WPIX (New York), KTVT (Dallas) and WWOR (new York), to home dish owners for an annual subscription fee of $36.

Netlink USA will provide three network affiliate stations from Denver together with an independent and public broadcast station to home dish owners soon.

All of the broadcast stations mentioned above are provided to cable systems without legal dispute. As a result, much of America can receive these stations today while distribution to the rural population of dish owners is still subject to attack by some.

4. What impact does the NBC and TCI/Netlink agreement have on H.R. 2848?

On June 25, NBC and TCI/Netlink announced an agreement in principle to provide NBC to dish owners who do not have access to network signals from either an affiliate or a cable operator. Under the terms of this agreement, if the dish owner is in a cable franchise area, he or she must buy ten to thirty-five channels of basic cable to receive NBC.

While this agreement in principle represents a step forward as evidence of NBC's willingness to serve rural areas, it does not solve the problem for either the dish industry or the copyright owners in general. Under the NBC deal, dish customers are still forced to purchase complete cable service just to get NBC even though they own their own facilities, and other copyright owners have not agreed to the plan. TCI has since endorsed H.R. 2848 as the complete answer to the entire problem.

5. Why shouldn't companies who retransmit broadcast programming negotiate for the right to retransmit it?

If the home dish industry was forced to negotiate all of the rights necessary to distribute broadcast television, there would be no broadcast television for rural Americans. There are simply too many copyright owners and no single representative with whom to negotiate. Even if individual negotiations were practical, successful agreements would have to be reached with all copyright holders in order to duplicate each broadcast day. That burden is too much to bear for the individual companies involved at the present. When the statutory license sunsets, each may be in a better position to do so.

6. Does the FCC have any public policy on these matters?

   The FCC has recognised that these copyright matters are better left to resolution by the Courts and Congress. However, to the extent distribution of network and independent broadcast television is available nationwide to home dish owners, the FCC has made it clear that it will be ready to consider affirmative relief for any incidental harm done to any programming interests on public policy grounds.

7. Why does H.R. 2848 have a grandfathering clause?

   Representatives of copyright owners wanted to limit the application of H.R. 2848 principally to those signals that are already on the satellite.

   Specifically, the Bill will apply to all broadcast stations (not the carrier companies) which either were distributed by satellite on or before June 1, 1987 or which are later available in cable systems representing at least ten percent of all cable subscribers. Any company that desires to uplink the stations covered by the Bill may do so in direct competition with those who now distribute stations covered by the Bill.

8. Why should networks be included in H.R. 2848?

   Since the networks are given the exclusive right to use the regulated airwaves, a limited national resource, they should serve all of America. Unfortunately the networks cannot serve every household through over the air broadcasts. Each network has announced plans to scramble their feeds. When this occurs, home dish owners will be unable to receive network programming except through companies such as SBN or Netlink USA. To the extent the networks are unable or unwilling to serve everyone, others should be allowed to do so on their behalf. That position was the driving force of the cable compulsory license ten years ago. The same need and balance is now required for a smaller market and industry.

9. How many home satellite dish owners cannot receive network programming off-air?

   CBS estimates that over four and one-half million homes cannot receive a CBS broadcast signal directly off-air. Not all of these homes, however, are equipped with home satellite dishes.

There are 2 million home satellite dishes in the United States. Based on industry research, approximately one-half of dish owners have trouble receiving an over-the-air broadcast from one or more of the major television networks.

While this audience of one million homes is small by network standards, it is made up of rural viewers who have made a substantial investment in a home satellite dish in order to remain within the telecommunications mainstream. As the universe of dishes grows, so will the number of dish owners who cannot receive adequate network service over-the-air.

10. Doesn't cable extend the reach of off-air network broadcasts sufficiently to cover most of America?

Some of the four to five million homes that are currently not able to get the signal of a local network affiliate off-air are able to subscribe to cable systems in highly populated areas. The networks assume that urban cable systems extend their cummulative reach to most of those four to five million households. However, most home dish owners live beyond the reach of most cable systems. It is estimated that up to 20 million homes will never have cable available.

To the limited extent cable is availabe to home satellite dish owners, they generally do not want to have to purchase broadcast television from most cable operators for a number of reasons. If the dish owner wants to purchase only network service, he or she will be forced to also buy 10 to 30 other channels at the same time for between $10 and $20 a month even though most of those extra channels are available by satellite, sometimes without charge.

Frequently, home dish owners have elected to purchase a dish due to the poor service of a cable operator. That poor service should not be forced upon them through an "exclusive" distribution outlet. The satellite dish industry was built to serve them, and it should not now be made a step child to its mature and powerful competitor - the cable industry.

11. What have the networks done to reach all American households?

The networks currently reach the vast majority of television households. As of yet, they have not found an economically and technically feasible way to reach the final small percentage of American homes that cannot be served off-air by network affiliates.

Translator or "repeater" stations have been built in the past with some success, but the networks now consider the expense and time associated with them to be prohibitive. CBS announced a task force to study the unserved problem, but it has issued no plan or report since the announcement of the task force formation on January 15, 1986.

For some time, rural home dish owners have been able to watch the unscrambled network feeds, but the networks all intend to scramble all those transmissions shortly without offering them for sale to individual viewers.

12. Don't network affiliates have the exclusive right to distribute network programming in their areas?

Not in fact. Many times more than one affiliate of the same network is available off-air. In Baltimore, for example, ordinary television antennas can pick up an ABC affiliate originating from Washington, Philadelphia, and Baltimore. Moreover, the networks themselves have been delivering their programming over the satellite throughout the country, unscrambled and available to all home satellite dish owners, for several years without any "harm" to the affiliates.

13. When will the network satellite feeds be scrambled?

CBS has begun to test its scrambling equipment on some of its feeds and will reportedly completely scramble all feeds this year. NBC and ABC have both indicated an intent to scramble, presumably in 1988. CBS and NBC have made it clear that they do not intend to make their scrambled feeds available to home dish owners. ABC has not made its position on that subject public. Once each network scrambles, those approximately one million homes equipped with satellite antennas which do not get off-air reception will be totally blacked out from network programming unless they can obtain it from a third party such as SBN or Netlink USA.

14. What will the impact of H.R. 2848 be on the networks?

Satellite delivery of network affiliate signals causes no economic harm to the networks. In fact, it will increase the viewing audience of the networks and thereby increase advertising revenues. The networks will also be free to scramble their feeds without impact on any viewers.

18. What will the impact of H.R. 2848 be on network affiliates?

The networks and their affiliates have claimed that satellite delivery of network affiliate stations theoretically interferes with the relationship between the network and its affiliates. However, it is very unlikely that many will pay $50 or more per year for a service they receive locally for free. In the words of Jack Lease, Vice President of programming and operation at WXIA, the Atlanta NBC affiliate uplinked by SBN,

> "Saleswise, it hasn't affected us," he says. "In most cases, there are local [network] affiliates that viewers can receive, and when they can get the network from the local affiliate, why would they want to pay additional money for the scrambled, out-of-town stations?" Satellite Direct, March, 1987.

According to Roger Ogden, President and General Manager of KCNC, NBC's Denver affiliate uplinked by TCI/Netlink,

> "I can't imagine they'll find enough people out there willing to pay for the service to make it worthwhile." Satellite Direct March, 1987.

To the extent a small minority of dish owners subscribe to satellite-delivered network service in areas of adequate off-air reception, that minority will not be of sufficient size to cause harm to any affiliate. By the time this Bill calls for arms-length negotiation of rates (after four years), it is estimated that only approximately three million dishes will be in place nationwide. Only a portion of them will be equipped with necessary decoders (300,000 in place today). Only a portion of those dish-decoder homes will actually subscribe and only a very small portion of those subscribers will be within an affiliate's area of service. Based on current estimates of future dish sales, an average affiliate may have at most a few hundred subscribers to satellite network service within its area of service. Even when a dish owner elects to subscribe to a network satellite service, he or she will also be able to continue to watch the local affiliate at the flick of a switch.

16. What will the impact of H.R. 2848 be on copyright holders other than the networks and their affiliates?

The Bill will provide an undisputed method for the disbursement of compensation to all copyright holders for the distribution of their works by satellite to home dish owners. (Currently, no one pays copyright holders for the distribution of their works on the network feeds.)

Although H.R. 2848 will allow distribution without permission in the short-term, copyright owners will retain control over their programming in the long-term through mandated negotiations and an eight-year sunset provision.

GLOSSARY OF SATELLITE TV TERMS

A/B SWITCH: a switch which allows a television viewer to alternate between a satellite signal and reception of broadcast television using an off-air antenna.

ACTUATOR: device used to position the satellite dish.

ADDRESSABILITY: that feature of the customer authorization process that enables a program distributor to address a specific decoder to unscramble the signal supplied to a given customer.

AFFILIATE: a broadcast television station which has contractually agreed to carry network programming in exchange for a network payment. A network affiliate station may be owned by the network or may be owned by an independent company such as Gannett, Tribune, or Westinghouse.

ANTENNA: satellite dish.

AUTHORIZATION: the process through which the transmitter of satellite-delivered programming unscrambles its signal for a customer who has paid a subscription fee.

C-BAND: the 3.7-4.2 GHz (gigahertz) band of transmission frequency. It is the standard frequency range used for most North American satellite broadcasts and most satellite dishes.

COAXIAL CABLE: transmission cable used to carry high frequency signal with low loss. Comprised of a center conductor surrounded by a dielectic (insulator) which is covered by a metal shield.

DECODER: descrambles encrypted signals; can be purchased for home use with most satellite dish equipment.

DISH DEALERS: business people who sell home satellite dishes and equipment to individual customers.

DISH DISTRIBUTORS: business people who sell home satellite dishes and equipment on a wholesale basis to dish dealers.

DRIVE: same as actuator.

ENCRYPTION: the scrambling of satellite signals done in order to secure the distribution of satellite signals and limit their reception to those viewers who have paid a subscription fee for the signals.

FOOTPRINT: the area of the earth's surface that a satellite's signal is expected to cover. It does not represent actual signal power at ground level, but it does give a good indication of the type and size system needed in a given area to receive a particular satellite.

FREQUENCY: the number of oscillations per second of an electromagnetic signal. Expressed in cycles per second or Hertz.

GIGAHERTZ (GHz): a frequency designation. Giga means billion and Hertz means cycles per second. 3.7 GHz would be 3,700,000,000 cycles per second. Term used to describe frequency at which domestic orbiting satellites transmit.

GRADE B CONTOURS: the predicted area of off-air reception of the signal of a broadcast television station. This may or may not be indicative of actual delivery of broadcast signals, since these are often impeded by terrain or terrestrial interference.

KU-BAND: geostationary satellites transmitting in the 11.7 to 12.2 GHz frequency band.

MEGAHERTZ (MHz): a frequency designation. Mega means million and Hertz means cycles per second. 70 MHz would be 70,000,000 cycles per second.

MICROWAVE: the frequency range from 400 MHz to 30 GHz.

NETWORK FEEDS: satellite-delivered network programming sent from each network to each of its affiliates to which the affiliate inserts commercials, syndicated programming, and local programming producing the finished broadcast product.

OFF-AIR BROADCAST SIGNALS: those television signals which a homeowner can receive using a conventional set-top or roof-top antenna.

POLARIZATION: orientation within a frequency band of an electromagnetic signal. Signals can be vertically, horizontally or circularly polarized.

RADIO FREQUENCY (RF): the electromagnetic band, between 10 KHz to 100 GHz, used for transmitting data, audio or video.

SYNDICATED PROGRAMMING: non-network television programming which is distributed through local broadcast television stations and paid for by those stations.

TI: terrestrial interference caused by land-linked telephone microwave transmissions which are often on the same frequency as satellite transmissions and which can cause problems if not filtered.

TRANSPONDER: a combination receiver, amplifier, and transmitter on the satellite which handles a particular channel to be transmitted.

TVRO: Television Receive Only antennas. Describes the function of home satellite dish systems.

UPLINK STATION: any ground station transmitting signals up to an orbiting satellite.

VIDEOCIPHER I TECHNOLOGY: the technology introduced by M/A-Com, now General Instrument, which will be used by NBC and CBS to scramble their network feeds. No home satellite dish owners will be allowed to purchase VideoCipher I decoders.

VIDEOCIPHER II TECHNOLOGY: the technology introduced by M/A-Com, now General Instrument, which is used in decoders and scrambling equipment associated with virtually all scrambled satellite-delivered programming other than the network feeds.

WHITE AREAS: those areas of the country which are not served directly by the networks, i.e. outside the reach of the off-air broadcast signals of the network affiliates.

Ms. METZGER. I am here in strong support of H.R. 2848. I support it because it confirms the rights of satellite dish owners to receive the same broadcasts that are distributed without restriction throughout the rest of the United States today.

As we have heard from several of the speakers, there are some 2 million television households today that are served by backyard dishes. These dishes are generally in areas that are not passed by cable television and do have poor reception. Our research shows that about half of these homes, about 1 million television households, are in areas where they get little or no network reception over the public airwaves.

These 1 million homes cannot receive these networks, and I refer to ABC, NBC, and CBS. Most cannot even pay to receive the networks because cable television does not pass by their home. Their only source of the major national news, basic entertainment, and major league sporting events that everyone takes for granted is over the satellite dish.

In fact, they have been watching the satellite transmissions that deliver network programming to the broadcast affiliates around the country. These are the so-called network feeds.

The networks, however, have individually and separately announced they will scramble all of their private feeds to their local affiliates. And they are, by and large, using VideoCipher I, as Dr. Medress referred to, which is incompatible with the VideoCipher II or the consumer standard.

When these feeds are fully scrambled, network service to these 1 million homes will be blacked out unless someone does something about it. My company, SBN, is trying to do something about this consumer problem. We are trying to do it with a fair and effective marketplace solution.

My company was founded in 1986 on a simple premise, to deliver network television to satellite dishes, just as network signals have been delivered to cable homes for the last 40 years. SBN began serving these homes because the networks would not. The networks have said, in effect, that the market is too small, too remote, too expensive for them to be bothered with.

We are also serving these homes today because cable will not. Again, these homes are often too remotely located, too few in number, and just too expensive for individual cable companies to serve.

So because of the unwillingness of cable and of networks to serve these areas we began, almost a year ago, committing the millions of dollars necessary to distribute the sale of our service, called PrimeTime 24. That is ABC from New York, WXIA the ABC affiliate in Atlanta, and WBBM the CBS affiliate out of Chicago.

We do not touch the network feeds and our three broadcast network affiliates are retransmitted in their entirety with all the advertising and certainly without modification. We scramble them so that those who need the signals can get them and pay for them. The local broadcaster is not harmed.

In fact, it is worth noting that right now the only harm anyone can say that can be coming to a local broadcaster is from the network feeds themselves, which are not yet fully scrambled. The network feeds today are right up on the satellite, unscrambled and free and clear for all to see.

But despite this current situation my company has met several challenges in its rights to exist. We based our business on the authority of the Copyright Act of 1976. In it Congress recognized the public benefits of maximizing the distribution of network signals to cable homes while balancing the rights of copyright holders with fair compensation.

Under that law, we now pay the required copyright fees, just as all cable systems do when they retransmit their signals to subscribers. We believe that the language of the act speaks for itself, but obviously others disagree.

We have been sued by all three of the major networks and two network affiliate associations. We feel that H.R. 2848 is now essential to clarify these issues and to make Congress' intent crystal clear to all.

If SBN were to lose in court and H.R. 2848 is not made law, the 1 million homes that we seek to serve, or more, could immediately lose all access to networks and all satellite dish homes could lose the independent superstations that Mr. Bliss just referred to.

Now, that might not be a big problem to the network executives in New York, but this is certainly a big problem in the living rooms of the rural communities that we serve. Our communities tend to be Lone Wolf, Oklahoma; Clay City, Illinois; Black Creek, North Carolina; Lovelady, Texas; Cedarville, Ohio; Rocky Gap, Virginia or Boulder Junction, Wisconsin.

These are real places, where real people live and these are our real customers. You would not believe how many rural route addresses there are in this country and we have personally taken the calls where people are really, truly delighted to know that they are going to be franchised and remain franchised with the three major networks.

I am not sure that any of us would particularly like to explain to these rural towns, to these rural homes, that they will not be watching the Super Bowl next year when the network feeds are scrambled and when the closest cable system will not even return their phone calls, if we are not available.

So as you debate the merits of this bill, please remember that in times of national celebration or in times of national disaster, it is still ABC, CBS, and NBC that bring us together. That is whether we watch these channels over rabbit ears or cable or microwave or backyard satellite dish.

Cable and broadcasters have already demonstrated their unwillingness or their inability to distribute news and entertainment to all parts of the United States. They must not now be allowed to stand in the way of new technology that can extend this information to all Americans.

Thank you.

[The statement of Ms. Metzger follows:]

STATEMENT OF
KAZIE METZGER, PRESIDENT
SATELLITE BROADCAST NETWORKS

BEFORE THE
SUBCOMMITTEE ON COURTS,
CIVIL LIBERTIES AND THE
ADMINISTRATION OF JUSTICE
ON
H.R. 2848
THE SATELLITE HOME VIEWER ACT OF 1987
NOVEMBER 19, 1987

STATEMENT OF KAZIE METZGER, PRESIDENT

SATELLITE BROADCAST NETWORKS

Good afternoon. My name is Kazie Metzger, and I'm the President of Satellite Broadcast Networks, known in the industry as SBN.

I'm here in strong support of H.R. 2848. I support it because it furthers the four principal goals of American communications policy:

1. Disseminating information to all Americans, particularly rural families in remote locations.
2. Protecting copyright holders and providing fair compensation for use of their works.
3. Advancing new communications technologies, and
4. Promoting competititive communications services for the benefit of all consumers.

Unfortunately, that public policy has not been fully realized with respect to the primary and most popular communications resource in America: network TV. I'm here to talk to you today about that gap in communications policy, about the copyright holders who create the network broadcasts, about the competitive technologies of cable, broadcast, and the satellite dish, and most importantly, about the rural viewer who has already invested over $2,000 in a communications link to keep him in touch with the rest of the world. It is this rural viewer who once again faces the threat of having that link cut.

Satellite dish technology is now a fixture in almost two million homes. Nearly half or about one million of today's satellite dishes are in remote or mountainous locations with poor television reception -- or none at all.

Those one million homes cannot receive network television over the public airwaves. They can't even pay to receive network television over cable because cable doesn't pass their homes. Their only source for ABC, CBS, and NBC is by satellite.

Thus far, they have been watching the satellite transmissions used by the networks to deliver their programming to their affiliates--the so-called "network feeds." The networks, however, have individually announced that they will scramble these feeds and will not allow access to any home satellite dishes. The networks have stated that the feeds are private transmissions between them and their affiliates, never intended for public viewing.

While recognizing the validity of the networks' argument, the fact remains that when the feeds are fully scrambled, network service to those million households will be blacked out...unless someone does something about it.

SBN is trying to do something about it, with a fair and effective marketplace solution to this problem. My company was founded in 1986 on a simple premise: deliver network television to satellite dishes--just as cable companies have delivered networks to cable homes for almost 40 years.

No one else is willing to serve these homes. The networks themselves haven't reached the million dish homes that have poor broadcast reception. Cable systems haven't. So SBN will, restoring access to them with the most advanced form of television delivery in the United States today: the satellite dish.

SBN is doing it because the networks will not. Now, the networks say they reach over 90% of all American homes. As for the rest, the networks say that the homes they don't reach are too few in number, too scattered in location, to worry about. They don't want to spend the millions necessary to get to those last few homes in hard to reach areas. So this market is simply too small for the networks to be bothered with--and they have said as much in writing to the FCC. And the FCC has in effect nodded in agreement, yes, this market is insignificant.

And, we're doing it because cable will not. The million dish homes with poor reception are scattered across or adjacent to the franchise areas of thousands of cable systems. And the vast majority of them are in sparsely populated areas that are too expensive for the cable system to reach. So cable has not rushed to offer service to these homes. In fact, it is generally agreed that there are at least 20 million homes that will never be wired for cable. About 4 to 5 million of those are not adequately served by off-air broadcasts. Many of these homes are potential dish owners, in addition to today's one million dish homes unserved by broadcast or cable.

Based on the unwillingness of cable and the networks to reach these areas, SBN announced more than a year ago that it would begin to sell PrimeTime 24, a package of three ABC, CBS, and NBC channels by satellite to rural America. For us, today's one million homes define a market that is very well worth serving, the only way anybody can--by satellite.

We supply network satellite service to those who will depend on it after the feeds are gone. We retransmit the over-the-air broadcast signal of WXIA-Atlanta, WABC-New York, and WBBM-Chicago. We do not touch the network feeds. Our three channels are all network affiliates that are retransmitted in their entirety and without modification, and we scramble the channels so that only those who need them can get them.

The rest is not quite history, since the final chapters are now being written, in part in this hearing today. We have gotten past the rigors of starting a business from scratch. In so doing, we have committed our company at considerable financial risk to serving the satellite dish consumer.

There is one last obstacle to our continued service of the million homes that have been ignored by the established cable and broadcast interests. That obstacle is the uncertainty, in the minds of some, regarding the legal basis under which our company and others can distribute scrambled channels to the satellite dish consumer.

When we started our business, we relied on the Copyright Act of 1976, in which Congress recognized the rights of cable systems to retransmit broadcast signals to its customers. Under that law, we pay the required fee for the right to distribute network programming just as cable systems across the country do. We strongly believe that the language of this Act speaks for itself, licensing our retransmissions to home dish owners. Others disagree.

By relying on the compulsory license granted us under the 1976 Copyright Act, SBN has been sued by all three major networks and two network affiliate associations. We have been sued for doing no more or less than all cable systems do every day when they rebroadcast network transmissions and charge customers for the privilege. H.R. 2848 is essential, therefore, to clarify these issues and make Congress' intent crystal clear to all.

It's not easy--or inexpensive--for a new company to defend the rights of rural home satellite dishes in a landmark copyright case. But the resolution of this issue now has consequences beyond the corporate life of Satellite Broadcast Networks. The satellite dish industry and the two million homes it currently serves are awaiting its outcome. And those companies that offer independent superstations such as Tempo, United Video, Netlink, and Eastern Microwave are also relying on our victory in court.

If SBN were to lose a first round in court and H.R. 2848 is not around, these one million homes or more could immediately lose all access to the networks, and all satellite dish homes could immediately lose almost a dozen more channels of sports, movies, and entertainment.

Now, this may not be a big problem in the network executive suites of Sixth Avenue in New York, but it sure is a big problem in the living rooms of rural communities like Lone Wolf, Oklahoma; Clay City, Illinois; Black Creek or Spring Hope, North Carolina; Ben Wheeler or Lovelady, Texas; Cedarville or Kitts Hill, Ohio; James Store or Rocky Gap, Virginia; and Boulder Junction, Wisconsin. These are the real places where our customers live.

No one, I'm sure, would like to explain to the consumers of these towns in rural America that they won't be watching the Super Bowl next year when the network feeds are scrambled, when the closest cable system won't return phone calls, and if PrimeTime 24 is not available.

To those who say, let companies like SBN negotiate for a license, I must point out that securing meaningful, contractual agreements with all of the copyright interests involved in network television is virtually impossible for us. Just as the cable industry needed guaranteed access to programming in its early stages--and still enjoys the protection of the compulsory license--so now does the dish industry.

It is not enough to have an agreement with just one, two, or all three networks. Sports interests, movie owners, syndicated programming distributors--all have to be in agreement in order for a marketplace solution to really mean something. The recent NBC/TCI-Netlink deal falls short in this and in other respects.

As you know, these companies have signed an agreement in principle to offer network programming to some home satellite dishes. It's a step in the right direction. However, by offering no compensation to non-NBC copyright holders, the NBC/TCI-Netlink arrangement remains critically incomplete and vulnerable to dispute with other copyright interests.
The NBC/TCI agreement also deals away the rights of the rural dish owners so that it can protect the current cable market from competition. It allows those one million homes without adequate broadcast reception to buy a network satellite signal only if cable is not available.

If cable is available, the family that has already spent two thousand dollars or more on a dish is supposed to shell out more than two hundred dollars a year for basic cable service. That's true because no cable operator is going to sell NBC separately; the dish owner will have to buy basic service and receive all three networks--plus perhaps another dozen channels that are readily available.

Instead of solving problems, the NBC/TCI-Netlink deal would simply translate to a multimillion dollar boondoggle for cable if it actually worked. It is not likely to work, however. Dish owners who have already decided not to buy from cable are not likely to change their mind and now pay more than $200 for the annual network ransom. The net result of the NBC/TCI-Netlink plan will be that local broadcasters still won't be delivered to those homes and those homes will remain without network programming.

In contrast, H.R. 2848 would allow sales to all dish homes in areas of bad reception, whether or not they are passed by cable. It recognizes that as far as the local broadcaster and cable operater are concerned, the dish owner may as well be 100 miles away. H.R. 2848 does not artificially protect cable. It doesn't hurt the local broadcaster or the network. It does offer real solutions to the rural viewer.

Finally, let me examine how the legislation will affect each remaining interest groups briefly. Will this legislation in fact harm the networks themselves? No, it will facilitate the extension of the network programming to homes that would be otherwise lost. We deliver more homes to advertisers, the basic equation of network economics.

Do we harm the local broadcaster? No, because our customers aren't reached by an over-the-air broadcast. Nor is it likely that translators be able to reach them in the future. Translators are expensive, cumbersome, and totally ineffective in mountainous regions. So most, if not all, of these million homes are lost and will remain lost to the local broadcaster.

Moreover, since we are scrambled, we are watched only by those homes that need us. We are not interfering with the broadcast reach of a local network affiliate. If anyone is hurting the affiliates, it is the networks themselves. The network feeds are not fully scrambled. They are right now up there in the clear for all to see for free, in competition with the networks' own affiliates.

Are we harming the copyright holders? No, because the legislation provides a mechanism for paying statutory license fees. The copyright holders will be compensated, just as they are under the cable compulsory license, perhaps at an even higher rate. In addition, after four years, the flat rate of compensation is replaced by an arbitrated rate.

Does everyone in the dish industry back H.R. 2848? While we don't agree on everything, the various constituencies within the dish industry recognize that continued access to network channels is essential. So long as superstations remain an endangered species, the marketplace will not be settled and the dish community will continue to suffer the consequences.

At its core, H.R. 2848 does nothing more than guarantee access to satellite-delivered broadcast television for all Americans. It does it by using a statutory license of short duration, a scaled-down version of the cable compulsory license.

As you debate the merits of the Bill, please remember that in time of national celebration and national disaster, it is still ABC, CBS, and NBC that bring us together--whether we watch events unfold over rabbit ear antennas, cable, microwave, or satellite dishes.

H.R. 2848 is the only way to guarantee network television to one million rural households, while accommodating all interests fairly. It simply continues the Congressional mandate to disseminate information to the public through advances in technology. It provides balanced protection of the rights of all copyright owners--and a competitive marketplace. It promises that the rights of the consumer will be equally protected under the law--whether the viewer is served by cable or by an alternative technology. And it ensures that the most popular programming in America will continue to be available to those satellite dishes that happen to belong to homeowners in rural locations.

Cable and broadcasters have already demonstrated their unwillingness and/or their inability to reach these homes: they must not be allowed to stand in the way of alternative delivery systems that can finish the job. SBN will continue to work here in Congress as well as in the courts to ensure that all dish owners receive his and her fair share of information and entertainment. Thank you.

MARY (KAZIE) METZGER
BIOGRAPHY

Mary (Kazie) Metzger is President, Chairman of the Board, and a co-founder of Satellite Broadcast Networks Inc. Her previous position was Vice President of Business Development and Market Analysis for Group W Cable, Inc., a $2 billion cable television subsidiary of Westinghouse Electric Corporation and third largest cable operator in the United States. Ms. Metzger joined Group W Cable in 1979, when it was Teleprompter Corporation, as Director of Business Analysis. She began her career in telecommunications at the start-up in 1975 of RCA American Communications, Inc., where she was instrumental in the development of the first satellite delivery of programming to cable. Ms. Metzger holds a Bachelor of Arts Degree in Economics from Duke University and a Master of Business Administration in Finance from Harvard Business School.

Ms. Metzger was born in Alexandria, Louisiana and grew up in Corpus Christi, Texas. She is married to John C. Harvey and is the mother of two young daughters.

Mr. **Kastenmeier**. Thank you, Ms. Metzger.

Just so I understand, you indicate that currently rural America with dishes is, in fact, able to see network programming via these network feeds and that these are going to be scrambled and will not be available to them, and that as a result SBN fills in a potential, in that respect, void.

However, it has also come to our attention, as you well know, that NBC has entered into an agreement or potential agreement, I guess, with NetLink. I think the other networks are exploring the same sort of option, to offer programming of a network signal in such a package.

If that were to be the case then, in fact, they would compete with you in terms of offering a network signal in another package to rural America, is that not correct?

Ms. **Metzger**. NetLink USA, which is a member of the SBCA, the trade association that we belong to, is a company that retransmits three network affiliate stations and they do have a contract or a letter of agreement with NBC. I think that that is a step in the right direction of working out these things privately. But there are a couple of problems with that private negotiation that we think that a bill would offer great benefit.

First of all, that private agreement blocks out selling in any home that is passed by cable. We feel that it unfairly gives preference to a cable system, whether or not they offer good or competitive service, in a location. What their agreement says is that if a homeowner with a dish is passed by cable, they cannot buy NBC off the satellite. So it does not matter how much the local cable company charges or how bad the signal quality is, they are forced into an anti-competitive situation.

The other reason why I think this bill is necessary, even though there may be room for private negotiations, is that NBC does not own all the rights, they do not represent all the copyright owners when they made that deal with NetLink. They, in fact, gave them a quit claim that extends to NetLink the rights they (NBC) have, and there is the potential to be sued by Major League Baseball or other interests because NBC cannot, obviously, give what they do not now possess.

So we think that this bill, which does allow for private negotiations, gives the framework and also the incentive for the networks to come to reasonable agreement. But it also protects us and the networks from additional suits, from other copyright owners.

Mr. **Kastenmeier**. As far as the future is concerned, in your terms, you foresee network signals available in your programming and also the programming which the network has, on its own, entered into?

Ms. **Metzger**. Yes. What I see happening is our three signals are, in essence, the eastern and the central time zones, and that they are kind of time zone appropriate, if you will, for the two-thirds of the dish owners that are in the eastern part of the United States.

The NetLink USA signals are all from Denver, Colorado and are more consumer friendly, if you will, to people in the west. So I think that there is a natural division, if you will, consumer division, of the market and I expect that they and we will do nicely.

Obviously, we will sell some in California and they will sell some in New York, but I think that by and large our markets will divide over the fact that most people do want to watch the news at six or seven and not at some other, inconvenient time. So that I would expect that they would be selling their three network affiliates and we will be, too, in competition with each other.

Mr. **Kastenmeier**. You made reference to a number of rural communities vividly in your testimony. Actually, in analyzing these consumers, as you obviously have done, do you have a feel for the percentage that come from white or unserved areas?

Ms. **Metzger**. There are a couple of ways that we have tried to do that, obviously. It is not a topic that has been lost on us. One of the problems is that zip codes tend to be very large areas, particularly in more rural areas. One part of a zip code can be behind a mountain and the other part can be on the other side of the mountain. One home gets good reception and the other home gets bad reception. So that is one of the difficulties when you just look at zip codes.

But having personally talked to an awful lot of these customers, what we find happening is that the people, when they understand that what we are selling are the three networks, what they say is oh, well, I get that off the air. And they say, I do not need you. And we say no, you probably do not. They very quickly decide that spending $50 to get our service is not really particularly attractive, because these boxes, by and large, these descrambler boxes have A/B switches and they typically will go back to their rabbit ears for free for their local channel.

I cannot tell you that none of my customers live outside of white areas. I am sure that some of them do. But we do know that from the addresses, and the zip codes, and the consumer reaction on the telephone, that the vast majority of our customers either get limited service or no service at all.

Mr. **Kastenmeier**. I am sorry, I missed the other point you were making. Are you, in fact, served through Dr. Medress'——

Ms. **Metzger**. Yes. We are scrambled VideoCipher II. You really cannot be in this business unless you go with this technology. We have been scrambled since the spring of this year.

Mr. **Kastenmeier**. Thank you.

Ms. **Metzger**. If I may, only the people who pay for us get us, and it is not up in the air in the clear. It is not like it is infringing on anyone.

Mr. **Kastenmeier**. Mr. Ellison, you certainly have, as your appendix indicates, an impressive list of members, including ComSat and Hughes, and earth members such as Zenith and Sony, in addition to all those directly involved with the dish industry.

Are these members uniformly, as far as you know, in support of this legislation?

Mr. **Ellison**. The information that I have, in talking with our members and with our board, would indicate that they are very much in support of this legislation. I think the majority would like to see some amendments to this bill, particularly with respect to the so-called grandfather clause limitation on stations, but by and large our association stands squarely behind the bill.

Mr. KASTENMEIER. Earlier, I had asked Mr. Bliss whether WGN was scrambled and he said yes, because I was reading from page three of your statement, which reads "similarly signals of independent superstations, that is WTBS–Atlanta, WPIX–New York, WWOR–New York, and KTVT–Forth Worth, have been scrambled."

Mr. ELLISON. I believe that the latin abbreviation there I used was e.g., I was just trying to give examples of scrambled stations. I have attached, as an appendix, a list of all of the scrambled stations, which would include WGN, at the back of my testimony. I did not include the names of all the scrambled stations. I was just trying to give examples.

Mr. KASTENMEIER. Of course, one of the problems that some of your trade association membership, particularly those selling the hardware, the dishes themselves, had was the scrambling and the expectations and just the uncertainty of where this all was going.

The committee, for the first time this morning, saw this demonstration of the system that Dr. Medress was showing us, plus the fact that there is something called the DBS Authorization Center.

Mr. Ellison, I wonder whether you might comment on whether this is an improvement with respect to the expectations of your membership or whether this type of technology is more expensive? You are not necessarily representing the consumers, but you are representing an industry which must sell to consumers, and presumably must contemplate some sort of system such as that shown us here, and obtaining scrambled signals and descrambling them.

I wondered what your comment would be about what was shown us this morning by Dr. Medress?

Mr. ELLISON. I think that it has taken our industry some time to adjust. There was an initial shock in 1986 when HBO scrambled, and there had been so much misinformation about the availability of programming and the question of whether there would ever be packages.

I think that we are moving out of that area now. Consumers are beginning to realize that they can purchase packages of services, so we are moving away from some of the initial problems that we had when the VideoCipher system was first implemented in 1986.

I think we have a ways to go. We would still like to see the program package pricing come down. We would like to see more availability. I think our industry as a whole would like to see the system costs come down, but as I said, we have gone from a $36,000 system in 1979 to a top of the line system for $3,000 that includes the decoder, that would probably include a year of programming services.

So I think that the industry is adjusting and our members, across the board, recognize that the VideoCipher encryption system is a box office, and in the long run it is going to create a very strong marketplace for us.

Mr. KASTENMEIER. Mr. Bliss, does NetLink qualify as a carrier, under the proposed bill, in your view?

Mr. BLISS. Yes.

Mr. KASTENMEIER. It does. You may not know the answer to this question, but I will ask it anyway. What effect will the purchase of

Southern Satellite Systems, or Tempo, by TCI have on the distribution of signals to earth station owners?

Mr. BLISS. At the present time, I do not see any change in the mix. Both Tempo and NetLink have back rooms where they do telemarketing to TVRO and I would assume that at some point in time, those would be merged. From our point of view, that eliminates one competitor.

Mr. KASTENMEIER. That would eliminate a competitor, in your view?

Mr. BLISS. It would eliminate a back office. It would combine two competitors into one.

Mr. KASTENMEIER. Thank you.

I would like to yield to the gentleman from Oklahoma, Mr. Synar.

Mr. SYNAR. Thank you very much, Bob and welcome, all three of you.

Let me ask you, Kazie, you are talking about those agreements between the networks and the distribution of signals, with respect to whether or not the cable passes by the satellite dish owner. Basically, what we are looking at here, are those type of agreements not forcing consumers to take a package which would include a network signal which they may not even want, in order to get that signal?

Ms. METZGER. Exactly. Typically, when you buy cable, and in fact I know of no examples, when you buy cable television, you must buy at least the basic package which typically would include 14 to 22 channels and could cost anywhere from $10 to $18 a month.

So, if you have a cable running by your home and you already have a dish and prefer to get your programming that way then just to get, for example NBC, under that kind of a deal you would have to subsidize your local cable company to the tune of maybe a couple of hundred dollars a year.

We do think that the backyard dish industry gives good competition, healthy competition to some cable operators, particularly in rural areas, because it reminds them to distribute good and clear signals, otherwise people will buy dishes.

Mr. SYNAR. Mark, let me ask you, some of the dish owners that I have visited with over time have suggested that the bill should be based on an absolute parity with the cable copyright scheme. What is your response to that?

Mr. ELLISON. Certainly, if we could have the same rate that cable is paying today, that would be very attractive. We found, as we began the process of working with Mr. Kastenmeier and your office, that we were swimming upstream somewhat, in trying to get this bill introduced. The compulsory license is not a popular device in Washington.

So we found that political realities and pragmatism forced us to recognize that perhaps a set rate, which was somewhat higher than cable, was necessary to bring some of the supporters of this bill on board behind us.

I would be very concerned about a bill which was tied strictly to cable. I am concerned that if syndicated exclusivity comes in, the superstations may be less of a viable alternative for cable, and they may allow the rates to rise over the next few years, to the detriment of TVRO.

So I think, although in a short run we are facing a little bit of disparity in the rates, that in the long run we are better off to have the certainty. And I would also say that I agree with the position that I believe your office may put forward, if they have not done so formally, is the idea of a set rate throughout the period of this license, through the sunset period. I think that would simplify matters and assure our ability to grow during that period of time.

Mr. **Synar**. Thank you, Mark.

Roy, this is just really for my clarification. Is the signal that you transmit at United Video, the WGN signal, is it identical to the signal that WGN sends out on its broadcast signal?

Mr. **Bliss**. Yes, it is.

Mr. **Synar**. Identical?

Mr. **Bliss**. Identical.

Mr. **Synar**. Roy, you also heard the MPAA come in here this morning and suggest that the copyright holders should be able to verify the accuracy of the satellite carriers subscriber accounts and stuff. Is that a proposal which you would agree to?

Mr. **Bliss**. Yes, I do not have any problem with that part.

Let me clarify that the signal we send out is exactly what we get from WGN. They do send us a different signal than they transmit in Chicago during programming which they own, for instance the Cubs.

Mr. **Synar**. So it is not identical, in all respects.

Mr. **Bliss**. Well, we are getting it from them, but it is not the same one that they send over their transmitter all the time. It is 99 percent of the time it is the same.

Mr. **Synar**. Thank you. Thank you, Mr. Chairman.

Mr. **Kastenmeier**. The gentleman from Virginia, Mr. Boucher.

Mr. **Boucher**. Thank you, Mr. Chairman. I only have one question. Mr. Bliss, I will direct this to you.

The legislation before us will provide a compulsory license for a four year period. During the second four year period, the negotiation would apply and binding arbitration in the event of a negotiation failure, would determine the amount of payments that would be made. Then, after that eight year period, this legislation would sunset all together.

What do you think will happen after that point in time? Is this eight year period sufficient for you? Do you feel like you need a longer period?

Just generally comment, if you would, on whether you think this eight year protection is sufficient.

Mr. **Bliss**. I would like it to be forever, there is no question about that. The entire bill is a compromise. We do not want to have to spend the rest of our lives in litigation over this, although we feel that the copyright law, as it now exists, covers what we are doing, but we would like this clarification of this bill.

Mr. **Boucher**. So you will accept the eight year period?

Mr. **Bliss**. I will accept it, but I do not like it. I think, on the other side of that, what do I think is going to happen in eight years, I think that some compromise will be reached, either between MPAA and the carriers and the stations, or it will be extended. We just will not turn off a couple of million people.

Mr. BOUCHER. I would assume, in the absence of that compromise, you will be back to see us, before that period?

Mr. BLISS. Yes.

Mr. BOUCHER. Did you want to comment?

Mr. ELLISON. Yes, I would like to comment on the sunset period. Our thinking, in going into this, was that after a period of, well, we had hoped for 10 or 12 years. We ended up with a bill that is eight. We felt like, at the end of that period, we would have a sufficient number of home dish owners out there and that we would have strength in the marketplace and be able to go out and negotiate as the copyright holders would like us to do.

One thing that has come up recently and predominantly today is the limitation of this bill to C-band, and I think that that would have a serious impact on our thinking, with respect to the sunset, because we anticipated the market strength based on a growth both in C-band and K-band and by the end of eight years having sufficient subscribers to negotiate.

If the bill were limited to C-band, I think that we need to seriously re-evaluate our thinking in that regard.

Mr. BOUCHER. Thank you very much. You wanted to comment, as well?

Ms. METZGER. If I could comment on that, too, none of our crystal balls tell us when KU-band is going to become the widespread technology. But by and large, we that serve the backyard dish industry do not control that. Rather, the cable television does.

So while the MPAA giveth on one hand, this could be the classic taketh away on the other, with the C-band, KU-band situation. It could be a real situation where cable controls the movement to KU, which would be enormously detrimental to us.

Mr. BOUCHER. Thank you very much.

Mr. KASTENMEIER. Thank you. I just have one last question.

I am not quite certain of its relevancy, although it is a morning item in the newspaper here: "Campaigning live by satellite feed." This one features Governor Dukakis, who broadcast by satellite to 56 college campuses. Apparently, others are using the device to reach out to satellite dish owners in Iowa and elsewhere.

How do you see this? This is not actually, I guess, affected by copyright, but do you see this living comfortably with the technology from your perspective, as you operate it?

Mr. BLISS. Certainly. I assume that it is not scrambled. They want everybody that is out there to watch it.

Mr. KASTENMEIER. It is not scrambled, right. But the accessibility, apparently, of NineStar II and WestStar IV orbiters is, in a sense, surprising, that there is that sort of availability so readily for campaign purposes or otherwise.

Mr. BLISS. I think it also, if you are campaigning to primarily rural constituents, it would be especially beneficial.

Mr. KASTENMEIER. That is really all the questions I have. The three of you have been very helpful. Ms. Metzger, Mr. Bliss, Mr. Ellison, we appreciate your appearance this morning. This is the opening day on this question. We hope to pursue the matter to a conclusion and I trust to a successful conclusion.

We will have another day of hearings, and we will try to schedule it in the very near future. We would hope to markup this legislation, I would not predict it certainly by year's end, but certainly by early next year.

Until the second hearing, the committee stands adjourned.

[Whereupon, at 12:50 p.m., the committee was adjourned.]

SATELLITE HOME VIEWER COPYRIGHT ACT

WEDNESDAY, JANUARY 27, 1988

House of Representatives,
Subcommittee on Courts, Civil Liberties, and the Administration of Justice,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to call, at 9:35 a.m., in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier [chairman of the subcommittee] presiding.

Present: Representatives Kastenmeier, Synar, Schroeder, Berman, Boucher, Moorhead, DeWine, Coble, and Slaughter.

Staff present: Michael J. Remington, chief counsel; Virginia E. Sloan, counsel; Thomas E. Mooney, associate counsel; and Audrey K. Marcus, clerk.

Mr. **Kastenmeier**. The committee will come to order.

Mr. **Moorhead**. Mr. Chairman?

Mr. **Kastenmeier**. The gentleman from California.

Mr. **Moorhead**. I ask unanimous consent that the subcommittee permit the meeting to be covered in whole or in part by television broadcast, radio broadcast and/or still photography, pursuant to Rule V of the Committee Rules.

Mr. **Kastenmeier**. Without objection, the gentleman's request is agreed to.

Today, the subcommittee is holding a second day of hearings on H.R. 2848, entitled the Satellite Home Viewer Copyright Act of 1987.

I want to thank several members of the subcommittee, notably Mr. Moorhead, Mr. Synar and Mr. Boucher, for their continued assistance and support. I note that we have received cosponsorship for this bill from another subcommittee member, Mr. Hyde, and also Mr. Hughes and Mr. Staggers of the full committee.

You will recall that the subcommittee held its first day of hearings on November 19, during which the subcommittee learned about the technology of earth stations and satellite communications. In addition, testimony about the merits of the legislation was presented by the Motion Picture Association, three common carriers, the Satellite Broadcasting and Communications Association, and the Satellite Broadcasting Network.

Hopefully today we will continue the process that we started last November. I have no illusions that the bill, as originally presented, may be amended in the process of dealing with this legislation. It is an extremely complex area and for many members of both the public and the committee, it is a learning process.

So we are delighted to have as our first witness this morning, a friend and familiar face to the subcommittee, Ralph Oman, the Register of Copyrights, who has headed that office since September of 1985. Due to time constraints—we have a long witness list this morning—I would encourage the Register to summarize his statement. Usually the Register presents long, thoughtful, scholarly statements, very helpful to the committee, and certainly essential for the full record of the committee, but in view of the time constraints, I would hope that Mr. Oman could summarize his statement.

It is an excellent analysis of the proposed legislation and I would encourage members of the subcommittee and others to read it carefully.

Mr. Oman, you have with you Ms. Dorothy Schrader of your office, I believe. You can identify those who accompany you.

Mr. OMAN. With your permission, Mr. Chairman, in addition to Ms. Schrader, I am accompanied by Andrea Zizzi, an advisor to the General Counsel.

Mr. KASTENMEIER. Actually, of course, Mr. Oman, you have a statement which is some 24 pages long, and then a one-page statement. I suspect we would like to hear more than the one page if that is possible, but something less than the 24 pages, but you use your own judgment in that connection.

TESTIMONY OF HON. RALPH OMAN, REGISTER OF COPYRIGHTS; ACCOMPANIED BY DOROTHY SCHRADER, GENERAL COUNSEL, COPYRIGHT OFFICE; AND ANDREA ZIZZI, SENIOR ATTORNEY, COPYRIGHT OFFICE

Mr. OMAN. Thank you very much, Mr. Chairman. We estimate approximately five minutes of your time and we will try to make it quick.

I do welcome this opportunity to appear before you and to present the Copyright Office's views on H.R. 2848, the Satellite Home Viewer Copyright Act of 1987.

As you know, this bill would create a temporary statutory license to make it possible for homeowners with satellite dishes in their backyards to have access to satellite programming.

Under most circumstances, the Copyright Office is a true believer in the marketplace, but we recognize that, under the current market conditions, the satellite carriers can't clear the rights to programming on broadcast signals, and they cannot retransmit those signals in scrambled form and market them to the home dish owners now since the copyright law stands in the way.

We also recognize that home dish owners want you to make sure that they do have ready access to these scrambled signals. In many cases, these dish owners have an especially compelling case because they live outside the service areas of cable systems or broadcast stations in the so-called "white areas," and their satellite dish represents their only link with the outside world.

Your bill, Mr. Chairman, solves the dilemma in the short term and in the long term gets us back to a marketplace solution to this licensing problem. The bill balances the interests of all parties. For an eight-year interim period, copyright owners will receive compensation for the additional public performances of their programming by satellite carriers. For eight years, dish owners have guaranteed access to satellite-delivered signals. For eight years, the retail carriers can earn a living.

Equally important, the bill encourages voluntary private negotiations between the parties. If that fails, it mandates that they arbitrate. These features provide a major stepping stone to a free-market environment which would replace the interim statutory license when the legislation's sunset provisions kick in after eight years.

So the Copyright Office supports the bill, but has a few recommendations for change to adapt the bill to recent changes in the satellite carrier business.

In the past year, at least one satellite carrier has begun to intercept, scramble and market to the earth station owners the signals of certain network-affiliated television stations. Because H.R. 2848 originally was not drafted with the retransmission of network signals in mind, the subcommittee might consider amendment of the operative term "superstation" to either exclude network signals or to include them, but limit access to dish owners who can't otherwise get over-the-air signals.

If you exclude network signals, you would let stand a part of the problem you are trying to solve with this bill; you would not assure the earth station owners access to this network programming.

The Copyright Office might favor the second alternative, including network signals within the scope of the statutory license, but fashion the provision to limit coverage to the certifiable hardship cases. The Copyright Office has heard about several proposals that would tailor specific provisions for the retransmission of network signals.

One proposal would provide statutory license coverage for a carrier's retransmission of the signal of a network-affiliated television station only where the signal is delivered to a subscriber whose earth station is operating in the "white area."

This approach would allow the satellite carrier freely to market its service in its targeted market while protecting other network-affiliated stations from competition from a distant affiliate.

The problem with this proposal is that it is difficult to define "white areas." The networks contend that it is currently not possible to identify or quantify households in unserved areas with any degree of accuracy. They suggest that this proposal could work if their affiliates had the statutory power to set the boundaries of the "white areas" or at least to veto the boundaries set by the resale carrier.

Another amendment would narrow the scope of the "white area" amendment to provide that for the retransmission of the signals of network-affiliated stations, the Section 119 license only covers the portion of the programming originated by the affiliate and does not cover network programming.

In theory, this amendment would provide the network affiliates compensation for the retransmission of the non-network portion of their broadcast signal while leaving networks free to negotiate with the carriers for a licensing arrangement such as the NBC/NETLINK agreement.

In reality, this proposal would only work if the networks negotiated such agreements, and the only strength of the proposal is that it might facilitate freemarket negotiations.

Another amendment would give networks the maximum control. It would require network consent for the Section 119 statutory license to kick in with respect to a satellite carrier's retransmission of a network affiliate. This would not guarantee the carrier's right to statutory licensing of network signals or automatically solve the "white areas" problem, but would facilitate negotiations between the affected parties.

Mr. Chairman, the Copyright Office supports H.R. 2848 as a short-term statutory solution that will facilitate the licensing of copyrighted works publicly performed by satellite carriers. A spirit of innovation, tempered with caution, has characterized the development of 2848. It is a measured response to a real problem. The timely passage of the bill would serve the public interests.

Thank you very much, Mr. Chairman. I would be pleased to answer any questions.

[The statement of Mr. Oman follows:]

Statement of Ralph Oman
Register of Copyrights
on H.R. 2848

January 27, 1988

The technological development of the home earth station engendered a new means of distributing copyrighted works to the public -- the retransmission of works embodied in broadcast signals by satellite carrier to home dish owners. If a satellite carrier scrambles broadcast signals, retransmits them to home dish owners and issues descrambling devices, the carrier is probably not exempt from copyright liability, under the section 111(a)(3) passive carrier exemption, for the public performance of the protected works embodied on the signals retransmitted.

If a carrier is not exempt from copyright liability under section 111(a)(3), it must obtain the consent of the copyright owners of the programming embodied in the signal it retransmits. To facilitate satellite carriers' compliance with the copyright law, and to balance the interests of copyright owners, satellite carriers, home earth station owners, and cable systems, several members of the Subcommittee on Courts, Civil Liberties and the Administration of Justice introduced H.R. 2848.

The bill would amend the Copyright Act to provide for an eight year statutory license for satellite carriers that retransmit superstations for private viewing by earth station owners. The bill's proposed section 119 statutory license would apply where a secondary transmission of a qualifying station is made by a satellite carrier to the public for private viewing, and the carrier makes a direct charge for such retransmission service to each subscriber receiving the secondary transmission. The section 119 license would operate in much the same way as the section 111 cable compulsory license, except for a unique method for determining a royalty fee. The bill would allow the parties voluntarily to negotiate a fee. If they do not set a fee by negotiation, the bill provides a statutory fee of 12 cents per subscriber per signal retransmitted that would apply for the first four years that the statutory license is in effect, and requires the parties to engage in compulsory arbitration to determine a fee for the second period.

The Copyright Office supports H.R. 2848 as a short term solution to the copyright licensing problem confronting satellite carriers. Because the statutory license that would be established by the bill is of short duration, and is merely intended to provide compensation to copyright owners during the interim period in which a marketplace mechanism for negotiating programming licenses is evolving, the Office concludes that the bill is an appropriate solution to a difficult problem. Furthermore, because the bill encourages private negotiation and/or arbitration, the bill provides a first step toward the establishment of the marketplace solution that should ultimately develop.

STATEMENT OF RALPH OMAN
REGISTER OF COPYRIGHTS

BEFORE THE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES
AND THE ADMINISTRATION OF JUSTICE

HOUSE COMMITTEE ON THE JUDICIARY

100th CONGRESS, FIRST SESSION

January 27, 1988

Mr. Chairman and members of the Subcommittee, I am Ralph Oman, the Register of Copyrights. I welcome this opportunity to appear before you and present comments on H.R. 2848, the Satellite Home Viewer Copyright Act of 1987, which was introduced by you, Mr. Chairman, and by Representatives Synar, Boucher, Moorhead, Hughes, and Garcia. This bill would create a temporary statutory license that would allow satellite resale carriers to retransmit, for a fee, programming from superstations to homeowners with satellite dishes in their back yards.

I. Background

Since the enactment of the Copyright Act of 1976, developments in satellite technology and changes in FCC communications policy have had a marked impact on the way the American public receives television programming. Satellite resale carriers distribute "superstations" like WTBS (Atlanta) and WOR (New Jersey) nationwide via satellite to cable. Similarly, other entrepreneurs have created a galaxy of new cable programming services for distribution via satellite to cable systems and the home subscriber. The technological development of the home earth station fostered the emergence of yet another programming audience: home dish owners whose backyard dishes intercept these satellite-delivered signals. The FCC estimates that as of mid-1986, approximately 1.6 million American households have home satellite dishes.[1]

Cable systems have traditionally paid satellite carriers a per-subscriber fee for delivering the broadcast or pay cable signal that they then send out over the wire to their subscribers, so the home cable viewer pays for the programming, either directly or as part of a package. Contrariwise, the dish owner who receives these signals has paid no fee. Congress has imposed no explicit liability and the dish owners resisted the idea of voluntary payments. Recently, however, the copyright holders and the resale satellite carriers have decided to encode, or scramble, their signals.

The issue of scrambling satellite signals initially prompted reaction from two different sources: home earth station owners and satellite resale carriers. Some home earth station owners object to scrambling because they think they have a right to receive satellite programming at a price comparable to that paid by cable subscribers who receive the same programming. Satellite resale carriers are concerned about the different issue of their own susceptibility to claims of copyright infringement. Once the satellite resale carriers begin to scramble the signals they deliver, and begin to market decoding devices to home dish owners, they may lose their exemption under section 111(a)(3) of the Copyright Act, and may be liable for copyright infringement for publicly performing copyrighted programming. This bill has received

---

1. In the Matter of Inquiry into the Scrambling of Satellite Signals and Access to those Signals by Owners of Home Satellite Dish Antennas, Report, FCC Docket No. 86-336, 2 FCC Rcd 1669 (1987) (hereinafter "FCC Scrambling Report").

additional reaction from other parties, including the representatives of network affiliated and independent television stations and the television networks.

Under section 111(a)(3) of the Copyright Act of 1976, the retransmission of a broadcast signal embodying a performance or display of a copyrighted work by a carrier is not an infringement if the carrier "has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission," and if the carrier's activities with respect to the primary transmission "consist solely of providing wires, cables, or other communications channels for the use of others."[2] In interpreting this provision, the U.S. Court of Appeals for the Second Circuit, in Eastern Microwave Inc. v. Doubleday Sports, Inc., 691 F.2d 125 (2d Cir. 1982), held that a carrier's retransmission of station WOR to cable systems fell within the section 111(a)(3) exemption, since it found that the carrier merely retransmitted the signal without change and exercised no control over the selection of the primary transmission or recipients of the signal. However, the courts have never addressed the question of whether a satellite resale carrier can scramble secondary transmissions and license decoding devices to home earth station owners and still retain the section 111(a)(3) exemption.

Congress neither approved, implicitly or explicitly, nor did it even contemplate this type of activity in granting the exemption to passive carriers. The Copyright Office has taken the position that, in selling, renting, or licensing descrambling devices to earth station owners, the carrier would appear to exercise control over the recipients of the programming. Moreover, licensing of descrambling devices would appear to

---

2. 17 U.S.C. §111(a)(3) (1976).

be a far more sophisticated and active function than the passive function of merely providing "wires, cables, or other communications channels." Therefore, in response to public and Congressional inquiry, the Copyright Office has concluded that the sale or licensing of descrambling devices to satellite earth station owners falls outside the purview of section 111(a)(3), particularly where the carrier itself encrypts the signal.

If a carrier is not exempted from copyright liability under section 111(a)(3), it must obtain the consent of the copyright owners of the programming embodied in the signal it retransmits. To facilitate satellite carriers' compliance with the copyright law, and to balance the interests of copyright owners, cable systems, satellite carriers, and the viewing public, several members of the Subcommittee on Courts, Civil Liberties and the Administration of Justice introduced H.R. 2848.

II. Origins and Characteristics of the Scrambling Technology

For a fuller understanding of the copyright law implications of the scrambling issue, a review of the origins and characteristics of the scrambling technology may be helpful.

The technology for scrambling developed and improved along with cable technology in general. Cable operators realized that they had to develop a way to prevent their subscribers from intercepting premium services without paying for those services. That need led to the development of various methods of "access control." The earliest forms of access control were simple devices ("traps") installed by cable companies to block customers' receipt of unsubscribed channels. These devices were soon abandoned because it was uneconomical for the cable company to change a subscriber's trap for every service change.

The simpler technology was replaced by signal scrambling technology, which would impose interferring signals on the video signal, and/or alter the synchronization of the incoming video signal with the ongoing scanning of the receiver's television screen, to prevent a subscriber from receiving a clear picture for the unsubscribed signal.[3]

In 1982, Home Box Office (HBO) became the first satellite video programmer to investigate the scrambling of satellite-delivered signals. HBO took bids from outside manufacturers to further develop scrambling technology. The M/A-COM VideoCipher system won the bid with a design that included digital encryption of the audio portion of the signal, secure digital processing of the video portion, and a list of administrative features, including the ability to directly address and authorize individual descramblers.[4]

In the preproduction stage, HBO determined that the original VideoCipher design was too expensive for home dish owners in the 1985 time frame because of the system's digital processing of the video signal. M/A-COM redesigned the system to substitute a somewhat less secure analog scrambling technique for the video portion of a signal.[5] The resulting decoding device, the VideoCipher II, has become the *de facto* standard for satellite signal scrambling in the United States.[6] The retail price of a stand alone VideoCipher II decoding unit is $395. The FCC estimates that

---

3. *See* Excerpts from CSP International, *Home Satellite Television, From Crisis to Success* (July 1986), Exhibit 4, Attachment 4 at 14 to Comments filed by National Cable Television Association in FCC Docket No. 86-336 (1986) (hereinafter "NCTA Exhibit 4").

4. Comments of General Instrument Corporation (GIC) in FCC Docket No. 86-336, at 8 (filed Oct. 20, 1986).

5. *Id.*

6. FCC Scrambling Report at ¶28.

approximately 97.5% of the home satellite dishes currently in use in the United States are or can be made compatible with the VideoCipher II decoder.7/ The FCC also concludes that there is presently an ample supply of decoders available to home dish owners, and that the available distribution and production facilities for the device appear adequate.8/

The VideoCipher II system has four components: the decoder unit in the home, the DBS Authorization Center, programmers' uplink facilities (which include scramblers) and program service/distributor business computer centers.9/ The authorization procedure for the viewing of scrambled signals begins as the subscriber, after purchasing and installing the decoder, turns on the decoder and the television set, and tunes the dish receiver to a scrambled channel. The subscriber must telephone the program computer center and order the program service desired. The program center relays the order information to the DBS Authorization Center, which merges the information into a "data stream" sent to all the scramblers at each of the programmers' uplink facilities. This process takes less than ten minutes. Ultimately, the authorization program codes and the individual decoder unit identification codes are received by the subscriber's satellite dish as well as the decoder. The "addressability" component of the decoder reads these codes and enables the service tiers ordered by the subscriber.10/

---

7. _Id_. at ¶30.

8. _Id_. at 31.

9. _See_ NCTA Exhibit 4 at 14.

10. _Id_. at 16-17.

III. Major Provisions of H.R. 2848

H.R. 2848 would amend the Copyright Act to provide for an eight year statutory license for satellite carriers that retransmit superstations for private viewing by earth station owners. The terms of the new statutory license would be set out in a new section 119.

The section 119 compulsory license would apply where a secondary transmission of the signal of a qualifying station is made by a satellite carrier to the public for private viewing, and the carrier makes a direct charge for such retransmission service to each subscriber receiving the secondary transmission, or to a distributor, such as a cable system, that has contracted with the carrier to deliver the retransmission directly or indirectly to the public for private viewing. The statutory license would not apply, and a satellite carrier would be liable for copyright infringement, in instances in which (1) the satellite carrier does not deposit the statement of account and royalty fee required by section 119; (2) the content of the programming or commercial advertising or station announcements embodied in the signal retransmitted is in any way willfully altered or deleted by the satellite carrier; or (3) the satellite carrier discriminates against any distributor in a manner that violates the Federal Communications Act of 1934 or the FCC rules.

The section 119 statutory license would operate in much the same way as the section 111 cable compulsory license. However, under section 119 the method for determining a royalty fee is unique. The bill would allow the copyright owners, satellite carriers, and distributors voluntarily to negotiate a fee for the compulsory license. If the parties do not previously set a fee by voluntary negotiation, the bill provides a statutory fee of 12 cents per subscriber per secondary signal delivered that would apply for the first four years that the compulsory license is in effect. Prior to expiration of the first four year period (January 1, 1988 until December 31, 1991), the bill requires the parties to attempt to negotiate a fee for the second four year period of the license (January 1, 1991 until December 31, 1995). The bill requires those parties who do not voluntarily negotiate a fee to engage in compulsory arbitration to determine a fee for the second period. A rate decided by compulsory arbitration would be subject to judicial appeal to the United States Court of Appeals for the District of Columbia Circuit.

The bill provides that the Copyright Royalty Tribunal would initiate and administer any compulsory arbitration proceedings, and publish the results of such proceedings. In addition, the Tribunal would administer the distribution of the royalty fees among the copyright owners pursuant to the same method that it distributes fees under the section 111 cable compulsory license.

The bill would allow satellite carriers to contract with distributors, such as cable systems, to market their services and collect royalties. However, the satellite carrier remains responsible under the bill for filing statements of account and paying royalties for services provided under the section 119 compulsory license.

Section 119 contains definitions of the following terms: antitrust laws; distributor; independent station (same as the 17 U.S.C. §111 definition);[11] primary transmission (same as the 17 U.S.C. §111 definition); private viewing; satellite carrier; secondary transmission

---

[11] While the definition of an independent station may be relevant if H.R. 2848 is amended to expand the scope of the statutory license as discussed infra, section IV.A., the definition appears to be unnecessary in the present version of the bill.

(same as the §111 definition); subscriber; and superstation.

IV. Proposed Amendments to H.R. 2848

A. Definition of "Superstation"

H.R. 2848 provides a statutory license for satellite carriers to retransmit superstations for private viewing by earth station owners. The bill would define a "superstation" in proposed section 119(d)(9) as either a signal that was already being carried by a satellite carrier as a superstation on June 1, 1987, or a signal that is so carried after that date if the signal is further retransmitted by cable systems serving in the aggregate at least 10 percent of all cable television subscribers. Presumably, this definition is intended to limit the number of signals carried pursuant to the section 119 statutory license to those that are indeed carried nationwide and to promote a parity of subscriber services between cable subscribers and home earth station owner/subscribers.

Traditionally, "superstations" have been independent television stations that initially served only a local area. However, recent developments in the satellite/video programming industry have rendered certain network affiliated stations, in effect, superstations.12/ This has raised questions about the scope of the statutory license created in H.R. 2848.

In the past year at least one satellite carrier has gone into the business of intercepting and scrambling the signals of certain network affiliated television stations, and retransmitting the signals for a fee to satellite dish owners, and/or to cable systems.13/ The activities of these

---

12. See FCC Scrambling Report at ¶183.

13. See Television Digest, Inc., Communications Daily, Dec. 4, 1986, at 3; The Washington Post, Feb. 7, 1987, at B1; Television Digest, Inc., Communications Daily, Feb. 26, 1987, at 8.

carriers have given rise to litigation for copyright infringement of network as well as syndicated programming embodied in the network affiliate's primary transmission retransmitted by the satellite carriers.[14]

These developments call into question whether H.R. 2848 should be amended to limit the scope of the section 119 statutory license by excluding statutory license coverage for a satellite carrier's retransmission of network signals, or, on the other hand, to expand the scope of the license by making special provisions applicable to the retransmission of network signals. Either result could be accomplished by an amendment to the definition of "superstation" in proposed section 119(d)(9).

In its present form, H.R. 2848 would literally extend the statutory license in proposed section 119 to satellite carriers retransmitting independent and network signals; however, the criteria for "superstation" status in Clause (B) of the definition were not conceived with network signals in mind, and would preclude any significant development of network superstations. Thus, if passed into law the legislation would arguably clarify the legal status of carriers retransmitting network signals, possibly rendering the litigation currently pending against one such carrier moot,[15] but would, in effect, raise more questions than it would answer. It is therefore questionable whether the

---

14. *See*, *e.g.*, Plaintiffs' Complaint, *Capital Cities/ABC, Inc. v. Satellite Broadcast Networks, Inc.*, 87 Civ. No. 0495 (MJL) (S.D.N.Y. Jan. 26, 1987).

15. *See supra* n. 13 and n. 14.

legislation as presently drafted would meet the concerns to benefit home earth station owners, especially those domiciled in the so-called "white areas" -- unwired areas outside the service area of network affiliates. 16/

Because H.R. 2848 does not address clearly this crucial new development, the definition of "superstation" in the bill should be amended to either exclude statutory license coverage for a carrier's retransmission of network signals or to designate specific provisions applicable to their retransmission of network signals. Clause (B) of the present definition limits the number of superstations eligible for the section 119 statutory license by providing that a station that otherwise qualifies as a superstation after June 1, 1987, is not eligible for the license unless the station's signal is retransmitted by cable systems serving not less than 10 percent of all cable television subscribers. If the Subcommittee does not intend for the statutory license to cover the retransmission of network signals, the definition must be amended to clarify that a superstation must be an independent station. If the Subcommittee does intend for the statutory license to cover the retransmission of network signals, the definition should be amended to clarify that the criteria for superstation status in Clause (B) do not apply to network stations (and, perhaps, to list different criteria for network stations).

The Clause (B) criteria would be difficult, if not impossible, for a satellite carrier first retransmitting a network affiliated station at some time after June 1, 1987, to meet. The carrier would have to convince cable systems all across the country to carry the signal of a distant network affiliate. A system might not be interested for a number of reasons: carriage of the signal could be duplicative of the signal of

---

16. See FCC Scrambling Report at ¶163.

another network affiliated station the system chooses to carry, it would cost the system additional cable compulsory license royalties, and duplicative carriage might cause difficulty for the cable system under the FCC's network nonduplication rules. Furthermore, if the bill is amended to limit statutory license coverage to the retransmission of network-affiliated stations to white areas, distribution of a network affiliate to systems serving ten percent of all cable subscribers would be impossible, since white areas encompass a reportedly small percentage of television households.

The most persuasive public interest argument supporting coverage under the section 119 statutory license of carriers' retransmission of the signals of network affiliated stations is the white areas argument -- that carriers should be able to easily obtain a license to retransmit network signals to those areas unserved by network affiliates. However, as a general rule, networks object to the retransmission of their affiliates' signals by independent satellite carriers, especially to areas served, or targeted for service, by their local affiliates. Networks initially objected to satellite carriers' retransmission of those signals even to white areas only, because they felt such retransmission could undermine their crucial relationship with their affiliates.

CBS argued to the FCC in its 1987 scrambling inquiry that "although [a satellite carrier] states that its service would be largely to white areas, it nevertheless would be available to every [home satellite dish] owner in the country ..." and that the satellite carriers' retransmissions "will not 'immediately' solve the white area problem."[17] ABC similarly objected to the satellite carrier's business activities, arguing to the FCC that they "directly conflict with the [FCC's] policies concerning network affiliate exclusivity and sports blackouts," and that even dish owners outside white areas would have an incentive to purchase the network retransmission service offered by a carrier because of the popular syndicated and sports programming carried during the nonnetwork portion of the network affiliate's broadcast day and because of time zone differences that would make it attractive for the dish owner to watch the distant network affiliate rather than the local affiliate. For these reasons, ABC argued to the FCC that a satellite carrier that retransmits a network affiliate to dish owners "substantially interfere[s] with the exclusivity of the network with its affiliates."18/ ABC, CBS, and NBC all stated to the FCC that the white area problem can be solved through network affiliates' use of translators and other terrestrial means of delivery.19/

---

[17] Id. at ¶184.

Recent developments suggest that at least one of the networks has reconsidered its position regarding the retransmission of network signals to home dish owners in white areas. NBC has licensed TCI's Netlink satellite service to retransmit NBC's Denver affiliate to white areas, as long as NBC retains veto power over the determination of whether a particular subscriber truly lives outside the service area of an NBC affiliate.

Since the announced goal of at least one satellite carrier is merely "to extend the reach of network programming to ... homes [not served by the networks]"20/ (i.e. to white areas), and since the networks' main

---

18. *Id.* at ¶185.

19. *Id.* at ¶¶165-67.

20. *CBS Files Lawsuit Against Satellite Company*, United Press International, Feb. 6, 1987, at Financial Section.

objection (other than copyright infringement) to the activities of the satellite carriers is the dilution of the value of copyrighted programs in the markets of network affiliates that would be forced to compete with a distant network affiliate (i.e. markets beyond white areas), then it would seem logical that the white area problem could be settled by private negotiation between carriers and networks in agreements such as the NBC-Netlink agreement, especially if H.R. 2848 is amended to facilitate such private negotiation.

Various amendments to H.R. 2848's definition of "superstation" might encourage negotiation. A broader amendment could provide that a network affiliated television station shall be considered a superstation only if the station is secondarily transmitted by a satellite carrier for nationwide distribution to a subscriber whose earth station is operating in a "white area." This would allow a satellite carrier to freely market its services in its targeted market while protecting network affiliated stations from competition from a distant affiliate.

There are two obvious problems with such a provision. The first is the definition and identification of "white areas." The second is the determination of who would initially implement that identification by authorizing service. On the first problem, NBC stated in its Comments to the FCC that "[w]hile we know from anecdotal evidence that there are households that cannot receive one or all of the network signals, it is not currently possible to identify and quantify households in unserved areas with any degree of accuracy."21/ The FCC has suggested that, in principle, it would be possible to develop a list of zip code areas in which network

---

21. Comments Filed By NBC in FCC Docket No. 86-336 (Oct. 20, 1986) (hereinafter "NBC Comments").

service is not available; because the VideoCipher II is capable of restricting access to scrambled programming based upon subscribers' zip code area, a carrier could restrict its retransmission activities to subscribers whose zip codes reflect a white area address.22/ The FCC noted the possibility that such a system might be easily defeated if subscribers falsely indicate an address with a white area zip code.23/

On the second problem, the question has arisen whether each network (or its affiliate) should have the power under the statutory license to make the initial determination that a particular home satellite dish is operating outside the service area of their affiliate station, or whether the network (or its affiliate) should merely retain veto power to challenge the determination made by the satellite carrier. A related issue would be whether the network should be able to choose which of its affiliates' signal should be brought to white areas and which satellite carrier should provide the service. While these restrictions appear to be elements of control not traditionally found in a statutory license, in seeking to achieve a balance among the parties the Subcommittee might consider such suggestions.

A narrower amendment might be more likely to encourage private negotiation. For instance, the definition of "superstation" might be amended to provide that the section 119 license only covers the portion of programming on the signals of network affiliated stations that is originated by the affiliate, and not network programming; the same

---

22. Inquiry into the Scrambling of Satellite Television Signals and Access to those Signals by Owners of Home Satellite Dish Antennas, Notice of Inquiry, FCC Docket No. 86-336, 51 Fed. Reg. 30,267 at ¶89 (Aug. 25, 1986).

23. Id.

amendment might be narrowed even more by also limiting coverage to signals retransmitted in white areas. Such amendments would provide the network affiliates compensation for the retransmission of the non-network portion of their broadcast signal while leaving networks free to negotiate with carriers for a licensing arrangement such as the NBC-Netlink agreement.

An even narrower amendment would be one that requires network consent for the section 119 statutory license to "kick in" with respect to a satellite carrier's retransmission of a network affiliate. This would not guarantee the carriers the right to statutory licensing of network signals or automatically solve the white area problem, but would facilitate negotiations between the affected parties.

Although the white area problem is an important one to the parties affected, the networks estimate that at most only between one and two percent of American television homes do not receive their signals.24/ The FCC concluded in its March 1987 Report on the scrambling of satellite signals that "the 'white area' problem is not that substantial upon a nationwide basis: a relatively small fraction of households are without full network service, and those genuinely affected have alternative programming sources available for entertainment and national news."25/ Thus, while it is important for the Subcommittee to resolve the white areas problem in the amended version of H.R. 2848, the solution need not be overly-complex because it will affect a relatively small number of viewers and is only an interim solution. Successful negotiations that are

---

24. FCC Scrambling Report at ¶¶164, 167, 171.

25. *Id*. at ¶192.

currently taking place between networks and satellite carriers (i.e. the NBC-Netlink agreement) demonstrate that a freely negotiated copyright solution should not be considered impossible.

B. Provision of Syndicated Exclusivity Protection for Independent Television Stations

At the August 7, 1986 hearing before this Subcommittee on H.R. 5126, the predecessor bill to H.R. 2848, Preston Padden, the President of the Association of Independent Television Stations, Inc. (INTV), in oral and written testimony objected to extending the compulsory license solution to solve the copyright hurtles faced by the satellite carrier/home earth station industry, at the further expense of the broadcast industry. INTV stated in written comments:

> In our view, the superstation carriers are not, and never have been, passive carriers. They are program distributors who select the programming they distribute and should pay fully for copyright, just like local stations.... It may sound a little old-fashioned, but we think people who want to beam programs up to a satellite for sale to others should first acquire the rights to those programs. Then they would be free to scramble and market their service as they wish.[26]

As a preface to making this argument, Mr. Padden argued that the balance of interests that existed when the cable compulsory license was enacted in 1976 has drastically changed because the FCC has repealed its former syndicated exclusivity rules, which gave broadcasters a mechanism by which they could prevent cable operators from competing unfairly with local

---

26. Hearings on H.R. 2848 Before the Subcomm. on Courts, Civil Liberties and the Administration of Justice of the House Comm. on the Judiciary, 99th Cong., 2d Sess. (Aug. 7, 1986) (written statement of Preston R. Padden, President, INTV, at 7).

broadcasters by importing distant programming that duplicated programming bought and paid for by local television stations at expensive free market rates.[27]

Since last summer, INTV has reportedly taken a new position on the satellite home viewer legislation. The trade press indicates that INTV has agreed to support H.R. 2848 if satellite carriers and/or their distributors are prevented from retransmitting to dish owners syndicated programming that duplicates programming broadcast in independent stations' local service areas.[28] Like network affiliates, the independent television stations want assurance that the new statutory license would not undermine exclusive copyright licensing arrangements within local service areas. Should the bill require satellite carriers to provide some revised form of syndicated exclusivity protection similar to the protection afforded under the FCC's former cable television syndicated exclusivity rules? A consideration of INTV's position is aided by a review of the FCC's former cable rules as well as any recent industry developments regarding the effort to revive those rules.

In the earlier years of the cable industry's development, when copyright and communications policy considerations were being ironed out by Congress and government agencies, the cable industry, the broadcast industry, and the program suppliers advocated solutions in their separate interests. Cable operators urged that Congress need not compensate copyright owners for the secondary transmission of their works because program owners received additional revenues through broader based advertising due to audience sizes increased from cable carriage of their programs. Program suppliers argued that free market negotiations should be required for every retransmission of any protected program by a cable operator. Broadcasters urged that unrestricted cable retransmissions pursuant to a compulsory license created unfair competition against broadcasters that must pay for the same programming retransmitted by cable systems.29/

---

[27] *Id.* at 4-5.

[28] Communications Daily, 7, 1987, Television Digest, Inc., Oct. 26, 1987, at 9.

Eventually, the industries reached an historic compromise agreement, the terms of which were later incorporated into FCC rules and section 111 of the Copyright Act of 1976.30/ Under this agreement, the cable industry would pay a statutory fee for its use of programming, reflecting primarily retransmission of distant nonnetwork signals. Broadcasters were given the ability to protect their contracts for the purchase of the exclusive right to exhibit programming in a certain locality pursuant to syndicated exclusivity and network exclusivity rules to be adopted by the FCC. The FCC adopted such rules in 1972.31/

The FCC summarized their syndicated exclusivity rules as follows:

> The syndicated program exclusivity rules limit the carriage of individual programs on signals that are otherwise available for carriage under the distant signal carriage quotas. These rules apply only to cable television systems in the fifty largest and second fifty largest television markets. In their application to the fifty largest markets, they require cable television systems, at the request of local television stations, to delete all programs from distant signals that are under

---

29. In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules relating to program exclusivity in the cable and broadcast industries, Notice of Inquiry, F.C.C. Docket No. 87-24, 2 F.C.C. Rcd 2393, ¶15 (April 23, 1987).

30. The Agreement is published at Cable Television Report and Order, Docket No. 18397, F.C.C. No. 72-108, 36 F.C.C.2d 143, Appendix D (1976).

31. Id. at ¶¶97-106; see also 47 C.F.R. §§76.91-76.159 (1972).

> contract for television exhibition to local stations. The rules also permit the owners of television programs to require deletion of programs from distant signals for a period of one year after an individual program is first sold for television broadcast anywhere in the United States.
>
> In the second fifty television markets, television stations that have programs under contract are also permitted by the rules to have these program deleted from distant signals carried by cable television systems. The rights provided by the rules, however, expire at the end of specified time periods or on the occurrence of a specified event: (1) for off-network series, exclusivity commences with the first showing and lasts until the completion of the first run of the series, but no longer than one year, (2) for first-run syndicated programs, it commences with the availability date of the program and extends for two years thereafter, and (3) for other types of programs, it commences with the purchase and continues until completion of the first run but, in no event, beyond one year.
>
> These rules generally require that the distant signal programs involved be deleted regardless of when that particular program is scheduled for showing by the local market station. However, in the second fifty markets, if the distant syndicated program is broadcast in prime time it need not be deleted unless that market station seeking protection is also going to broadcast that program in prime time. The rules also permit cable television systems to substitute other distant signal programs, if they are available, in place of those that must be deleted under these rules.32/

Because the syndicated exclusivity rules were an increasing source of criticism, and because of perceived changes in the balance of power among the relevant industries, in 1980 the FCC reevaluated the need for the rules.33/

---

32. In re Cable Television Syndicated Program Exclusivity Rules and In re Inquiry into the Economic Relationship Between Television Broadcasting and Cable Television, Memorandum Opinion and Order, 79 F.C.C.2d 663 at ¶¶14-16 (1980).

33. Id. at ¶18.

The FCC concluded that these rules disadvantaged cable subscribers by denying them access to additional sources of programming.34/ It also determined that the elimination of the rules would have little effect on local television station audiences and on the stations' revenues, or on program suppliers, whose revenues were seen as directly dependent upon changes in station revenues.35/ Given these factors, the FCC decided to eliminate the syndicated exclusivity rules because the rules were seldom invoked, the cable industry would fare better without them,36/ and their elimination would not harm broadcast stations or programmers.37/

This year, the FCC has found cause to reexamine the facts and premises underlying its 1980 decision in light of current realities in the cable/satellite industry.38/ The FCC's inquiry focuses upon the fact that its 1980 deregulation proceeding failed to address the issue of the balance of power among competing program delivery systems as reflected in equality of contractual opportunity.39/ By way of example, the FCC suggests that imbalances may already exist between cable systems and broadcasters because cable programming services can buy exclusive rights to exhibit programming, but broadcasters cannot, due to the existence of the cable compulsory

---

34. Id. at ¶28.

35. Id. at ¶242.

36. The FCC assumed that the rules reduced the general appeal of cable to subscribers and thus retarded the growth of the cable industry. Id. at ¶330.

37. Id. at ¶¶241-243, ¶330-331.

38. In the Matter of amendment of parts 73 and 76 of the Commission's rules relating to program exclusivity in the cable and broadcast industries, Notice of Inquiry and Notice of Proposed Rulemaking, Docket No. 87-24, (April 23, 1987).

39. Id. at ¶28.

license. Another imbalance exists within the broadcasting industry. Network broadcasters fare better than independent broadcasters because of the existence of the FCC's network nonduplication rules.[40] The FCC expressed its view that "for a market to function efficiently, in addition to having a competitive environment, property rights of all participants must be well specified and enforceable at reasonable costs.

The FCC also addressed the important issue of why, if the FCC's former syndicated exclusivity rules were seldom invoked, should we reinstitute them now. The FCC cites the enormous increase in the prices of syndicated programming, and greatly increased cable penetration in major television markets as factors that would make broadcasters more likely to invoke syndicated exclusivity rules today than they were ten years ago.[41]

The resurgence of interest in syndicated exclusivity protection for independent television stations as against competition from cable systems comes, logically, at a time when the cable industry has grown and prospered, and can no longer be considered an infant industry that needs a protected place in the market in order to better serve the public. The rules are perceived as necessary by independent broadcasters, in large part, because the cable industry continues to enjoy a favored position in the programming acquisition market because of the cable compulsory license.

The Subcommittee faces the issue of whether, if it were to grant another competitor in program distribution a favored position for acquiring rights to copyrighted programming, it should simultaneously offset the resulting imbalance by requiring the statutory licensee (the satellite carrier or its distributor) to provide syndicated exclusivity for independent television stations with which it competes. In so doing, the Subcommittee would theoretically deliver a preemptive strike in balancing the relative bargaining positions of the satellite carriers and the independent broadcasters.

---

[40] Id. at ¶31.

[41] Id. at ¶32.

On the other hand, the practical implications of imposing syndicated exclusivity rules on satellite carriers may be prohibitive. These rules were formulated to regulate thousands of cable systems operating in hundreds of television markets, while the satellite carrier can easily service one large national market. Thus, the theory of protection underlying the rules would not transfer well to the satellite carrier industry. An enormous regulatory and industry effort would be required to implement and administer complicated, technical rules requiring satellite carriers to "black out" a myriad of different syndicated programs retransmitted to thousands of home dish owners at various different times and at the behest of hundreds of different local television stations. Such an effort would appear to be inconsistent with the other provisions of H.R. 2848, which attempt to create a short term mechanism to provide compensation to copyright owners during the interim period in which a marketplace mechanism for negotiating programming licenses is evolving.

V. Copyright Office Conclusions

H.R. 2848 balances the interests of copyright owners--that they receive adequate compensation for the additional public performance of their programming by satellite carriers--with the interests of homeowners. The Copyright Office supports the public policy objectives that underlie the bill--to encourage satellite carriers to pay royalties for their use of copyrighted programming, to allow reasonable access by a small number of home dish owners to satellite programming, and to encourage the development of voluntary licensing structures.

Under ordinary circumstances, the Copyright Office advocates a marketplace solution to a copyright licensing problem wherever feasible. However, the Office recognizes that it is not immediately feasible for carriers to create a marketplace structure for the purchase of programming licenses for the works that are currently being retransmitted via satellite and that are or will soon be marketed on a scrambled signal. Accordingly, the Office supports the short term solution afforded by H.R. 2848. Because the statutory license that would be established by H.R. 2848 is of short duration, and would only require access to the signal during the interim period in which a marketplace mechanism for negotiating programming licenses is evolving, the Office concludes that the bill is an appropriate, finely-tuned solution to a difficult problem. Furthermore, the bill's mechanism for setting the second term rate by encouraging voluntary negotiation and, in the alternative, mandating arbitration provides a first step toward the establishment of the marketplace solution that will almost certainly develop.

A spirit of innovation tempered with caution has characterized the development of H.R. 2848, and the Copyright Office concludes that the timely passage of the bill, with appropriate modifications, would serve the public interest.

Mr. **Kastenmeier**. Thank you, Mr. Oman. That indeed was brief.

You have identified several potential copyright problems that could emanate from the scrambling and sale of superstation signals to dish owners. Are there other problems that you see that you have not had time, in your brief presentation, to allude to that you see?

Mr. **Oman**. There is one problem that occurred to us just recently in revisiting the bill in preparation of the testimony, and that is, that under the current draft of H.R. 2848, it would appear that the newer satellite carriers are not covered in the actual language of the bill. In other words, the satellite carrier that is, in fact, now carrying the network signals is not covered by the bill. That would have to be a change.

Let me also ask Ms. Schrader and Ms. Zizzi to comment on that point.

Ms. Schrader.

Ms. **Schrader**. Just to amplify that point, as we understand it, the definition of resale satellite carrier is restricted to common carriers licensed by the FCC and based——

Mr. **Kastenmeier**. Incidentally, this is a very important point and I wonder if you could simplify things for us by indicating what you believe to be the difference, if any, between a common carrier, a resale carrier, a distributor, a packager. All these terms and others are used to describe certain entities that may exist between the dish owner and the program originator that may send a signal up to the satellite.

Is there a distinction between these groups, distributors, packagers, resale carriers, common carriers? What distinction can you make so we can see who plays what role in terms of these various parties?

Ms. **Schrader**. The term "common carrier," of course, is one freighted with history and communications law. The FCC licenses common carriers. As originally drafted, the phrase in the bill is a common carrier licensed by the FCC. In fact, we understand that the original carriers of independent "superstations,"—for example, the carriers by name, United Video, Southern Satellites, now Tempo, Inc., and Eastern Microwave—that these have common carrier licenses from the FCC.

Recently we have become aware that apparently the SBN organization does not have a common carrier license. Now that, of course, is subject to checking with them and further checking with the FCC, but that is our understanding.

So the term "common carrier" would have a fairly precise meaning under communications law. A term such as "distributor," "satellite carrier" would have whatever meaning you give it in terms of defining it in the statute.

I think one thing that is clear is that not all distributors are common carriers. Basically, a common carrier would be one licensed by the FCC to provide a particular service at particular rates and the service would have to be offered to everyone and there would be conditions of that kind.

Mr. **Kastenmeier**. That is to say, we can identify who is a common carrier under the law, but resale carrier, distributor or packager may be a common carrier or may not be a common carrier.

Ms. **Schrader**. I think so, yes.

Mr. **Kastenmeier**. SBN, you mentioned, I think, specifically, would be a resale carrier. Would they be a resale carrier?

Ms. **Schrader**. Apparently, that terminology doesn't specifically apply to them; SBN is neither a resale common carrier nor a common carrier. They are simply a distributor at this point, apparently leasing time on the satellite.

Mr. **Kastenmeier**. Thank you. Have you concluded in amplifying what Mr. Oman started to talk about?

Do you see any other problems, Mr. Oman, or, let me ask you this.

Mr. **Oman**. One other comment, Mr. Chairman, that I might mention. In talking to some of the parties involved in preparation of our testimony, we have learned that there is movement toward voluntary compliance at this point. You might make the judgment, after listening to the witnesses today, that, in fact, we have moved much further down the road than we were when the bill was first drafted and you might want to consider telescoping inward the periods involved for the various phases of the bill.

Instead of four years under the set fee or the mandatory licensing, you might want to telescope that down to two years, or if it looks like we have made a lot of progress in that direction already, you might want to eliminate that provision entirely and go immediately into the arbitration phase. But we don't have the perspective to judge whether or not this would be viable at this point. You might hear from the witnesses that perhaps the marketplace is already moving in this direction.

Mr. **Kastenmeier**. One of the witnesses will express his concern that satellite carriers are discriminating against independent dish owners in favor of distribution by cable companies and recommends that any legislation insure that satellite carriers distribute signals on a nondiscriminatory basis and that there not be price discrimination for the signal, including the copyright royalty.

In your view, is the Copyright Act amenable to an amendment barring price discrimination?

Mr. **Oman**. Ms. Schrader is prepared to answer that question.

Ms. **Schrader**. It seems to us that the bill, as now pending, already makes an effort in this direction because it does provide, in Section 119(a) Clause 4, that the carrier would become fully subject to copyright liability if the carrier discriminates against the distributor in a manner which violates the Communications Act.

Now, the matter of pricing would be a separate matter and probably would require additional language in the bill. At least provisionally, I would see no difficulty in terms of copyright philosophy. The problem is coming up with appropriate language that would be fair.

Mr. **Kastenmeier**. Thank you.

I have a couple of other questions, but I would like to yield to my colleagues. I am delighted that Mr. Moorhead, Mr. Synar, Mr. Coble and Mr. Berman have arrived.

I would like to yield to the gentleman from California, Mr. Moorhead.

Mr. **Moorhead**. Thank you, Mr. Chairman. I wish to welcome you, also, Mr. Oman and Ms. Schrader. Always glad to have you here.

Mr. **Oman**. Thank you, Mr. Moorhead.

Mr. **Moorhead**. With the exception of WTBS, the common carriers transmit certain independent local television broadcast stations across the country without permission of the local stations, as I understand it.

Why should the Congress permit them to scramble or unscramble something that is not theirs and which they take without permission of the local broadcasters?

Mr. **Oman**. I think the ultimate objective of the bill is to make sure that the marketplace in the end controls this transfer of rights and that you are looking for the ideal situation down the road eight years from now where, in fact, there would be armslength negotiations to enable the copyright owners to protect their rights and allow the marketplace to provide the services that the homeowners want.

Let me ask Ms. Schrader to elucidate on that point.

Ms. **Schrader**. I really don't have too much to add. Obviously the bill attempts a balance between the interests of the home dish owners in having access to signals and whatever proprietary rights may be involved in the distribution of the program. As Mr. Oman has said, the clear emphasis on the bill is towards voluntary negotiations.

In fact, in the second four-year phase in which the law would be in effect—there is a very strong impetus towards voluntary negotiations, and hopefully, marketplace solutions would be developed during that time period and would be in place at the end of the bill's life.

Indeed, of course, we also see to some extent the attempt at voluntary negotiations, even under the present law with the reports of the agreement between NBC and NETLINK. So there apparently is a possibility of working out such an arrangement, but perhaps there must be some legislative solution along the lines of this bill as a temporary matter to give impetus to those voluntary solutions.

Mr. **Moorhead**. In the case of the "superstations," do you think that the permission of the local broadcasters should be required?

Ms. **Schrader**. I don't believe that we have taken a position on that. We have suggested a number of possible amendments that you might want to consider in dealing with the question of network signals. You might want to take similar considerations into account in dealing even with the signals of independent stations.

Of course, if you are referring to the possibility of reinstating syndicated exclusivity as a matter of protecting the local broadcasters, then that does become very complicated. You have a signal that is being distributed nationwide and different local broadcasters would have different marketing arrangements with the program suppliers. It strikes us that it would be very difficult for a satellite carrier to impose blackouts and to respect syndicated exclusivity if that were mandated as part of the bill.

Mr. **Moorhead**. Under the bill before the subcommittee, there would be a limitation on the number of "superstations." Should there be such a limitation?

Mr. **Oman**. I think the political realities have gone into the definition to allow the homeowner access to those widely circulated signals to give him or her parity with the cable subscriber. I think that in the long run, with the marketplace forces at work, there won't be any artificial limitation on the signals that the homeowner can receive over the backyard dish, but that, in fact, the negotiations would allow the market to bring to the home any signal that was economically feasible.

Mr. **Moorhead**. Thank you very much.

Mr. **Oman**. Thank you, Mr. Moorhead.

Mr. **Kastenmeier**. Thank you.

I would like to yield now to the gentleman from Oklahoma.

Mr. **Synar**. No questions, Mr. Chairman.

Mr. **Kastenmeier**. I would like to then yield to the gentleman from North Carolina.

Mr. **Coble**. No questions, Mr. Chairman.

Mr. **Kastenmeier**. The gentlewoman from Colorado.

Mrs. **Schroeder**. No questions, Mr. Chairman.

Mr. **Kastenmeier**. You apparently aren't even inspiring any curiosity among us.

How about the gentleman from California, Mr. Berman?

Mr. **Berman**. How are you feeling today?

Mr. **Oman**. So far, so good.

Mr. **Berman**. I have no questions, Mr. Chairman.

Mr. **Moorhead**. It is going to be an easy morning, I guess.

Mr. **Kastenmeier**. The gentleman from Virginia?

Mr. **Boucher**. No questions, Mr. Chairman.

Mr. **Oman**. The main performance is about to begin and we are going to be as eagerly interested in what they say as the rest of the audience. We look forward to the opportunity.

Mr. **Kastenmeier**. I would like to do this. I am not going to ask further questions either at this point, but I would like to suggest that your office be in further touch with us because one thing I have noted—and I guess members of the committee are aware of this—there are a number of amendments that have surfaced in the past several months, perhaps some very recently, that would impact on this bill. There may even be suggestions that the bill ought to be expanded to include essentially communications policies issues such as things we would want to think very carefully about.

In any event, we solicit your continued advice on this matter and will be in touch with you later. We thank you for your brief presentation this morning.

Mr. **Oman**. Thank you very much, Mr. Chairman, we are at your service.

Mr. **Kastenmeier**. I would now call forward a panel, a very large one at that, of witnesses representing broadcasting interests. The three national networks are here. Representing NBC is Mr. Thomas Rogers, Vice President of Policy Planning and Business Development, and he is accompanied by Mr. Al Seethaler, a member of the NBC Affiliate Board and Vice President and General Manager of KUTV, Salt Lake City, Utah.

ABC is represented by Dr. Charles Sherman, Chairman of the ABC Affiliate Association and present General Manager of WHOI TV, Peoria, Illinois.

The testimony of CBS will be presented by Mr. Anthony C. Malara, Vice President of Affiliate Relations and Distribution.

The networks have been working hard to devise a distribution scheme for the unserved areas of the country. As background, I can say that NBC has signed an agreement with NETLINK USA. ABC and CBS are considering doing the same. On the panel, therefore, is the President of NETLINK, Mr. Brian McCauley.

Last, but not least, is Mr. Preston Padden, the President of the Association of Independent Television Stations.

With your permission, in order to conserve time and maintain continuity, I will recognize you in the order of your introductions. Hopefully your statements will be summarized and we will try to reserve the questions until the very end.

Mr. Rogers, you may commence, sir.

TESTIMONY OF THOMAS S. ROGERS, VICE PRESIDENT, POLICY PLANNING AND BUSINESS DEVELOPMENT, NBC, INC.; ACCOMPANIED BY AL SEETHALER, CHAIRMAN, SATELLITE COMMITTEE, NBC TELEVISION AFFILIATE BOARD, AND VICE PRESIDENT AND GENERAL MANAGER, KUTV, SALT LAKE CITY, UTAH; CHARLES E. SHERMAN, CHAIRMAN, GOVERNMENT RELATIONS COMMITTEE, ABC TELEVISION AFFILIATES ASSOCIATION, PRESIDENT AND GENERAL MANAGER, WHOI-TV, PEORIA, ILLINOIS; ANTHONY C. MALARA, VICE PRESIDENT, AFFILIATE RELATIONS AND DISTRIBUTION, CBS TELEVISION NETWORK; ACCOMPANIED BY PHILLIP JONES, CBS TELEVISION NETWORK AFFILIATES ADVISORY BOARD AND VICE PRESIDENT AND GENERAL MANAGER, KCTV, KANSAS CITY, MISSOURI; BRIAN McCAULEY, PRESIDENT, NETLINK USA; AND PRESTON R. PADDEN, PRESIDENT, ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC.

Mr. Rogers. Thank you very much, Mr. Chairman.

My name is Tom Rogers and I am Vice President, Policy Planning and Business Development, for the National Broadcasting Company. My presentation before this subcommittee will discuss NBC's goals for the expansion of our program service to rural America and our plans for achieving those goals with a marketplace solution.

Two major public policy goals are furthered by our initiative to expand the reach of the NBC Television Network. The first goal is to achieve universal television service by encouraging access to our programs through the use of a new technology, the satellite earth station.

Our second goal is to adhere to the principle of localism which we believe is best served by the network affiliates system.

As NBC has often stated, it has always been our objective to achieve universal service. In 1985, for instance, NBC Group Executive Vice President, Ray Timothy, responded to a congressional inquiry about scrambling, saying that "NBC is in the business of increasing viewer levels, not denying service to viewers" and that "ultimately, we would want all American viewers to have access to our news, information and entertainment programs."

Our objective is consistent with the primary purpose of the Communications Act.

NBC would like to assure that all rural Americans have the same access to the network's information and entertainment programming, from Today to the Cosby Show, that the vast majority of Americans enjoy.

With the emergence of satellite earth stations, we have a clear opportunity to provide our network service to such rural areas, but as we try to serve these rural areas, we are also committed to continue observing the policy of localism. Television stations are licensed to serve local communities, and therefore, are able to broadcast news, information and public affairs programs that respond to local needs and interests. Simply put, local programming is a fundamental part of the service of all television licensees.

NBC's commitment to localism is embodied in the network-affiliate partnership. This commitment becomes all the more important with the emergence of other video delivery systems, such as DBS, MDS, SMATV, VCR's and cable television, none of which offer significant local programming.

Therefore, the public interest benefit of our service would decline greatly if only the network element of this service was received by viewers. The health of our network affiliate system is threatened by compulsory licensing, especially to the extent carriers take our signals and distribute the programming without regard to what that does to a station's ability to provide local programming.

By definition, a compulsory license strips from a producer or packager of programming the right to control its distribution and substitutes a government-mandated scheme of distribution in its place. Congress should impose a compulsory license only where the marketplace cannot suffice.

Until recently, viewers living in unserved areas did not have, when it came to the reception of broadcast network programming, a marketplace which worked. Technology—the satellite dish—has created part of a marketplace solution. NBC's and its affiliates announced plans with NETLINK—which we are pleased to learn that the other two broadcast networks and their affiliates now support in concept—can help supply the rest of that marketplace approach and do so in a way that does not threaten the policy goal of localism.

In essence, NBC has reached the nonexclusive agreement with NETLINK, a satellite carrier, wherein we are granting permission to retransmit to unserved dish owners the signal of KCNC-TV, the GE NBC station in Denver, which carries all of our network programming.

The agreement provides that NETLINK will offer the scrambled signal of KCNC-TV to satellite dish owners who cannot receive an NBC affiliate off the air and who are not served by a cable system carrying an NBC affiliate station.

NBC is entering into this arrangement as a public service and will receive no compensation from NETLINK under this arrangement.

Our decision to not authorize NETLINK to market its services to dish owners who are passed by a cable system is consistent with the goal of localism. This aspect of our arrangement with NETLINK is by no means intended to favor cable as a technology or as a distribution system. The fact is, however, if a local affiliate is available via cable, even if not available over the air, at least the cable system is providing access to the NBC network programming in a way that preserves the strength of the affiliate station as a source of local programming.

In summary, we expect our agreement with NETLINK to provide a marketplace approach to help realize the goal of providing service to dish owners who do not otherwise have access to network programming, while preserving the best possible local programming service to the public.

Thank you, Mr. Chairman.

[The statement of Mr. Rogers follows:]

Before the
Subcommittee on Courts, Civil Liberties,
and the Administration of Justice
of the
Committee on the Judiciary
United States House of Representatives

Statement
of
Thomas S. Rogers
Vice President
Policy Planning and Business Development
National Broadcasting Company, Inc.

January 27, 1988

Statement of Thomas S. Rogers

My name is Tom Rogers and I am Vice President, Policy Planning and Business Development, for the National Broadcasting Company. My presentation before this Subcommittee will discuss NBC's goals for the expansion of our program service to rural America, and our plans for achieving those goals with a marketplace solution.

Two major public policy goals are furthered by our initiative to expand the reach of the NBC Television Network. The first goal is to achieve universal television service by encouraging access to our programs through the use of a new technology -- the satellite earth station. Our second goal is to adhere to the principle of localism which we believe is best served by the network-affiliate system.

As NBC has often stated, it has always been our objective to achieve universal service. In 1985 for instance, NBC Group Executive Vice President Ray Timothy responded to a Congressional inquiry about scrambling -- saying that "NBC is in the business of increasing viewer levels, not denying service to viewers" and that "ultimately, we would want all American viewers to have access to our news, information, and entertainment programs."

NBC would like to assure that all rural Americans have the same access to the network's information and entertainment programming -- from TODAY to THE COSBY SHOW -- that the vast majority of Americans enjoy.

Our objective is consistent with the primary purpose of the Communications Act which provides in Section One: "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nationwide ... radio communications service ..." For more than fifty years, the Federal Communications Commission has acted to carry out this statutory purpose. At the present time, the NBC Television Network through its local affiliate stations reaches almost 99% of television households. In general, only the most remote rural areas are unable to receive affiliate signals either off-the-air or by cable television.

With the emergence of satellite earth stations, we have a clear opportunity to provide our network service to such rural areas.

But as we try to serve these rural areas, we are also committed to continue observing the policy of localism. Television stations are licensed to serve local communities -- and are therefore able to broadcast news, information, and public affairs programs that respond to local needs and interests. Simply put, local programming is a fundamental part of the service of all television licensees.

NBC's commitment to localism is embodied in the network-affiliate partnership. Affiliate stations retransmit our network programs together with local programming to their communities. It has become clear that the network affiliate relationship creates a means of distribution which is instrumental to the goal of localism. This becomes all the more important with the emergence of other video delivery systems -- such as DBS, MDS, SMATV, VCR's and cable television -- none of which offer significant local programming.

Therefore, the public interest benefit of our service would decline greatly if only the network element of this service was received by viewers.

The health of our network-affiliate system, the integrity of our program distribution system, and our program exclusivity rights are each threatened by compulsory licensing -- especially to the extent carriers take our signals and distribute the programming without regard to what that does to a station's ability to provide local programming. By definition, a compulsory license strips from a producer or packager of programming the right to control its distribution, and substitutes a government-mandated scheme of distribution in its place. Therefore, Congress should impose a compulsory license only where the marketplace cannot suffice.

Until recently, viewers living in unserved areas did not have--when it came to the reception of broadcast network programming--a marketplace which worked. Technology -- the satellite dish -- has created part of a marketplace solution. NBC's and its affiliates' announced plans with Netlink--which we are pleased to learn that the other two broadcast networks now support--can help supply the rest of that marketplace approach, and do so in a way that does not threaten the policy goal of localism.

In essence, NBC has reached a non-exclusive agreement with Netlink, a satellite carrier, wherein we are granting permission to retransmit to unserved dish owners the signal of KCNC-TV -- the General Electric/NBC television station in Denver--which carries all of our network programming. The agreement provides that Netlink will offer the scrambled signal of KCNC-TV to satellite dish owners who cannot receive an NBC affiliate off-the-air, and who are not served by a cable system carrying an NBC affiliate station. NBC is entering into this arrangement as a public service and will receive no compensation from Netlink under this arrangement.

Our decision to not authorize Netlink to market its service to dish owners who are passed by a cable system is consistent with the goal of localism. This aspect of our arrangement with Netlink is by no means intended to favor cable as a technology or as a distribution system. The fact is, however, if a local affiliate is available via cable, even if not available over-the-air, at least the cable system is providing access to the NBC network programming in a way that preserves the strength of the affiliate station as a source of local programming.

In summary, we expect our agreement with Netlink to provide a marketplace approach to help realize the goal of providing service to dish owners who do not otherwise have access to network programming, while preserving the best possible local programming service to the public.

Thank you.

Mr. **Kastenmeier**. Thank you, Mr. Rogers.

Now, next is Mr. Seethaler, who is a member of your NBC Affiliate Board. Mr. Seethaler.

Mr. **Seethaler**. Thank you, Mr. Chairman. My name is Al Seethaler and I am Vice President and General Manager of KUTV, an NBC-affiliated television station in Salt Lake City. I am also a member of the NBC Affiliate Board, and in that capacity, serve as Chairman of the Satellite Committee.

The main purpose of my presentation before this subcommittee is to reaffirm affiliate support for the NETLINK service, wherein NBC has agreed to furnish its program schedule to a satellite carrier for distribution to unserved rural areas. The affiliate body supports NETLINK's service because we share NBC's goal of achieving universal television service.

At the present time, the 206 NBC-affiliated stations reach about 99 percent of America's television households with our combined network and local programming service. It has become apparent that a different approach would be needed to extend the service to the other 1 percent, households located in remote rural areas where the economics of broadcasting and cable television do not justify reaching them.

The development of satellite technology, including backyard earth stations, gives us the opportunity to achieve nationwide television service. That is why we applaud the agreement between NBC and the NETLINK partners, which will offer the programming of NBC's Denver station to unserved earth station owners.

I should also point out that the affiliate body support is based on large part on the fact that NETLINK will offer its product only to truly unserved areas. In general, the service will not be offered to any backyard dish owners located inside our grade B signal contour or located in any cable service area where the cable system carries an NBC station.

These points underscore the importance of protecting the network affiliate program service, which has responded so well to America's information and entertainment needs. In fact, the combined service offered by the network affiliate stations is unique in America. Broadcast stations alone are charged with local programming obligations, obligations which have given birth to so many quality news, information and public affairs programs responding to local community needs.

The network affiliate service is the choice of many viewers because of our unique combination of local and national news and entertainment programs. In order to ensure the financial well-being of affiliate stations, it is important that NETLINK deny access to backyard dish owners who can receive our signal off the air or whose home is passed by a cable system carrying an NBC station.

Preservation of our viewer base is an essential requirement if we are to have the resources to satisfy our programming obligation and to serve our communities with quality programs.

The NETLINK agreement is responsive to the goal of universal television service, the legislative goal of H.R. 2848. At the same time, our unique service, delivered to the public through community-based stations, will be protected from viewer erosion.

Finally, I urge this subcommittee not to take any action that either impedes the startup of the NETLINK service or that weakens the network affiliate system.

Thank you.

[The statement of Mr. Seethaler follows:]

Before the
Subcommittee on Courts, Civil Liberties,
and the Administration of Justice
of the
Committee on the Judiciary
United States House of Representatives

Statement
of
Al Seethaler
Chairman, Satellite Committee
NBC Television Affiliate Board

January 27, 1988

Statement of Al Seethaler

My name is Al Seethaler, and I am Vice President and General Manager of KUTV, an NBC affiliated television station in Salt Lake City. I am also a member of the NBC Affiliate Board and, in that capacity, serve as Chairman of the Satellite Committee.

The main purpose of my presentation before this Subcommittee is to reaffirm affiliate support for the Netlink service -- wherein NBC has agreed to furnish its program schedule to a satellite carrier for distribution to unserved rural areas.

The affiliate body supports the Netlink service because we share NBC's goal of achieving universal television service. At the present time, the 206 NBC affiliated stations reach about 99% of America's television households with our combined network and local programming service. But it has become apparent that a different approach would be needed to extend service to the other 1% -- households located mostly in remote rural areas where the economics of broadcasting and cable television do not justify trying to reach them.

The development of satellite technology, including backyard earth stations, gives us the opportunity to achieve nationwide television service. That is why we applaud the agreement between NBC and the Netlink Partners which will offer the programming of NBC's Denver station to unserved earth station owners.

I should also point out that the affiliate body's support is based in large part on the fact that Netlink will offer its product only to truly unserved areas. In general, the service will not be offered to any backyard dish owner located inside our Grade B signal contours or located in any cable-served area where the cable system carries an NBC station. These points underscore the importance of protecting the network-affiliate program service, which has responded so well to America's information and entertainment needs.

In fact, the combined service offered by network affiliate stations is unique in America. Broadcast stations alone are charged with local programming obligations -- obligations which have given birth to so many quality news, information, and public affairs programs responding to local community needs.

The network-affiliate service is the choice of many viewers because of our unique combination of local and national news and entertainment programs. In order to ensure the financial well-being of affiliate stations, it is important that Netlink deny access to backyard dish owners who can receive our signal off-the-air or whose home is passed by a cable system carrying an NBC station. Preservation of our viewer base is an essential requirement if we are to have the resources to satisfy our program obligations and serve our communities with quality programs.

The Netlink agreement is responsive to the goal of universal television service -- the legislative goal of H.R.2848. At the same time, our unique service -- delivered to the public through community-based stations -- will be protected from viewer erosion.

Finally, I urge this Subcommittee not to take any action that either impedes startup of the Netlink service or that weakens the network-affiliate system.

Thank you.

Mr. **Kastenmeier**. Thank you, Mr. Seethaler.

I would now like to call on Dr. Charles Sherman, representing the ABC Affiliate Association.

Dr. **Sherman**. Thank you, Mr. Chairman, and members of the subcommittee. I am Charles Sherman, President and General Manager of WHOI in Peoria, Illinois. I serve as Chairman of the Government Relations Committee of the ABC Television Affiliates Association, which consists of over 200 television stations across the nation that are affiliated with the ABC network.

We appreciate the opportunity to appear here today to express the Affiliates' views on H.R. 2848 and if, Mr. Chairman, I provide somewhat of a philosophical historical context for my testimony today, it comes from the eight years in which I served on the faculty at the University of Wisconsin and taught communications policy and history of communications.

In looking over the materials in preparing for our presentation today, it was very obvious, Mr. Chairman, that the principal purpose of this bill is to expand the delivery of broadcast programming to homes in so-called "white areas." We wholeheartedly endorse that effort.

In fact, for years now, the affiliates on their own have been trying to serve the "white areas" through their translator and booster systems. We have one affiliate, for example, KOAT, in Albuquerque, New Mexico, which has 82 translators in operation. That is just part of the over 5,000 that are in operation today throughout the country.

This is not a service that has simply stood still; this service continues to grow. It is our estimate that right now translators are growing at a rate of about 4 percent each year for both affiliate and independent stations at a cost of 30- to $40,000 for each installation and about $3,000 for operation. So we are committed to expansion of service, but we also realize that the satellite system provides an alternative to reach that other 1 percent of the country that we can't reach through translators.

That is why we are wholly supportive of the efforts to try to make sure that some method is found in which homes located in these "white areas" can indeed be served. But we are concerned about what we might call unanticipated consequences, that by taking this action two or three years down the line, there might be consequences that were not foreseen when this bill was put into place. That is our principal concern today.

We want to make sure that people who today receive their signals through translators and boosters still getting that free will not find their service eroded because, simply through an unintended consequence, a satellite carrier becomes the primary means by which signals are distributed to those rural areas. What could well happen over a period of time, if that unforeseen consequence takes place, we could begin to see the audience for translator stations erode, and over a period of time, there becomes less incentive for the broadcaster to continue to maintain those systems.

So what we are concerned about is making sure that those people who do not have the means to pay for satellite reception will still be able to receive their signals through the translator system that we have set up today.

There is also another aspect of the bill that we find troubling and that we are even more concerned about, and that deals with exclusivity. To the extent that the bill would delimit local stations from obtaining the exclusive right to distribute network and syndicated programming within their local service areas, the bill could again lead to an unanticipated erosion of the existing system of local broadcast stations, and that is another area that we are concerned about, because you have a delicate balance here in terms of exclusivity and how that exclusivity affects the system.

If you take a look, for example, at the network-affiliate relationship, this is in the world a unique combination of national and local elements that have evolved after decades of hard work. The network provides the advantages of program acquisition or production on a national scale and makes possible the sale of advertising on the same national scale. The network also offers a broad range of programs that can be scheduled throughout the broadcast day.

But we have to remember that a local affiliate is just not an outlet for its network's programs. As we frequently like to remind people like Mr. Malara and others at the network that a program can't be preempted until it is cleared, that it is still basically the local broadcaster who makes the determination as to what will be scheduled throughout the day, and we are the ones who are responsible for our local news, weather, sports, and programming of special interest to the local audience, and it is the local station who fulfills the promise and the challenge of the Communications Act to serve the needs and interests of the community.

Satellite carriers have no such public service obligations, and we ask you to consider whether it would be wise for Congress to take steps that could undermine the ability of broadcast stations to serve that public interest. The bill as currently written would not limit satellite network service to "white areas" but would grant a compulsory license allowing service to satellite dishes in all areas.

The potential for such a distribution system to evolve to the point where it bypasses the local affiliate altogether is obvious. It sets the stage for the replacement of the current broadcast distribution system of local stations with a network DBS system.

Another thing to consider as well is that when you look at this business of exclusivity, we are not talking also about the network, but we are also concerned about our syndicated exclusivity. In some respects, we share with Mr. Padden a similar characteristic. For about 25 to 33 percent of our broadcast day, we are independent stations; we program outside of the network. But as far as the network-affiliated station is concerned, it is this combination of our network service, our local service, which enables us to be successful. It is the quality of those national programs which really gives us a special niche in the communications picture.

While we are all justifiably proud as local broadcasters of our news and locally produced programming, that programming would not be possible without the audience delivery that is provided through network and syndicated national programming.

We are confident that in considering this bill Congress does not intend to undermine the ability of local stations to continue to serve their markets, and on behalf of the ABC affiliates I would like to emphasize that we are willing and ready to work with this committee to try to craft a bill that would serve and balance all interests. We are already working very closely with the people from Netlink through the ABC television network to come to an agreement. We have been in discussions with Netlink since last April; the process has been slow, but we are very, very hopeful that we are going to reach a conclusion in the very near future and that conclusion will be positive.

One final comment, Mr. Chairman and members of the committee. When Congress back in 1934 was considering the Communications Act, it had an opportunity at that time to provide a national system. In fact, there was already a move underfoot, in stations like WLW out of Cincinnati, to operate at 500,000 watts of power, and it would have been possible for 10 stations to blanket the entire Nation. But in considering that, Congress said no. Congress at that time said, "We want a local system that will be responsive to local needs," and we would hope that that is still the attitude that is still the desire of Congress today, that while we join with you to see the expansion of service to all Americans throughout the country we do not at the same time provide the seeds of erosion of our present local system.

Thank you.

[The statement of Dr. Sherman follows:]

STATEMENT OF CHARLES E. SHERMAN

BEFORE THE HOUSE COPYRIGHT SUBCOMMITTEE

(H.R. 2848)

January 27, 1988

Thank you, Mr. Chairman and Members of the Subcommittee. I am Charles Sherman, President and General Manager of WHOI-TV, Peoria, Illinois, and I serve as Chairman of the Government Relations Committee of the ABC Television Affiliates Association. The Association consists of over 200 television stations across the nation that are affiliated with the ABC Network. We appreciate the opportunity to appear here today to express the Affiliates' views on H.R. 2848.

H.R. 2848 would amend the Copyright Act to allow satellite carriers to retransmit the signals of certain broadcast stations to home satellite dishes for profit. A satellite carrier, on payment of a statutory copyright fee, would be allowed to pick up the signals of certain network affiliated and independent superstations (without their consent), scramble the signals and charge dish owners a fee for unscrambling them.

It is our understanding that a principal purpose of the bill is to expand the delivery of broadcast programming to homes in so-called "white areas" that do not now receive service from local stations. We endorse that objective. In fact, our members have spent considerable sums over the years to construct translator and booster stations to extend local service to rural and sparsely populated areas.

ABC Affiliate KOAT-TV, in Albuquerque, New Mexico, for example, is now carried on 82 translators over a four state rural area. Homeowners served by the translators built by KOAT-TV did not have to purchase any special receiving equipment and they are not required to pay any monthly fee to receive the service. That, of course, would not be the case if the service were provided to these homes by a satellite carrier.

A Congressional policy that designated satellite carriers as the preferred delivery system for broadcast programming in rural areas would -- however unintentionally -- tend to discriminate against those households that cannot afford to buy a receiving dish and pay a monthly service fee in perpetuity. Not only would this satellite service be available only to those who could afford it, the existence of such satellite service could lead to a reduction in the amount of free broadcast service that is currently available in those areas. As the number of households relying on satellite service in rural areas increases, local stations will have less incentive and less financial ability to build and maintain translator stations. That, in turn, could ultimately deprive low income households in rural areas of the free broadcast service they now receive from translators. We encourage the Subcommittee to make every effort to assure that in its attempt to facilitate broadcast service in rural areas for some, it does not, unwittingly, deprive others of access to that same service. As those of us who have struggled with the white area issue over the years know, this problem is a challenge that requires a delicate balancing of interests and is not one which lends itself to easy solutions.

There are other aspects of the bill as drafted, however, that are even more troubling. To the extent the bill would prevent local stations from contracting for the exclusive right to distribute network and syndicated programming within their local service areas, the bill could lead to the demise of the existing system of local broadcast service that has served the nation so well. We implore the members of this Subcommittee not to take lightly the importance of preserving the system created by Congress that has successfully brought broadcast television programming to approximately 99% of the country.

The very fact that there is an interest in extending the reach of network programming to those few areas that cannot receive it is proof of how well the existing network-affiliate distribution system serves the nation.

The network-affiliate relationship is a unique combination of national and local elements that has evolved after decades of hard work.

The network provides the advantages of program acquisition or production on a national scale, and makes possible the sale of advertising on that same national scale. The network also offers a broad range of programs that can be scheduled throughout the broadcast day. But a local affiliate is not just an outlet for its network's programs. In fact, it is the affiliate who makes the decisions about which network programs to broadcast locally, and it is the affiliate who produces local news, weather, sports and other programs of special interest to its local audience. In other words, it is the local affiliate who fulfills the promise, and the challenge, of the Communications Act to serve the needs and interests of the community.

Satellite carriers have no such public service obligations. We ask you to consider whether it would be wise for Congress to take steps that would undermine the ability of broadcast stations to serve the public interest. The bill currently under consideration by the Subcommittee ignores the importance of the exclusive agreement between the network and its local affiliates. It would allow a satellite carrier to bypass the local affiliate and deliver network programming by satellite directly to the home dish user. The danger is not merely that the affiliate is losing part of his local audience to a network affiliate from a distant market, but that a system is being set up that permits direct distribution from the network to the viewer--completely bypassing the local broadcast station. The bill, as currently written, would not limit satellite network service to white areas, but would grant a compulsory license allowing service to satellite dishes in all areas. The potential for such a distribution system to evolve to the point where it by-passes the local affiliate altogether is obvious. It sets the stage for the replacement of the current broadcast distribution system of local stations with a network DBS system. And that could be the end of the local television station as we know it.

The ability of local broadcast stations to contract for exclusive program rights for their market is critical to their existence. The importance of program exclusivity to our system of broadcasting cannot be overstated. And, although I am here speaking on behalf of the ABC Network Affiliates Association, this fundamental principle holds true for independent broadcasters as well. It is the appeal of unique programming that attracts viewers to a particular station. The strong appeal of exclusive national programming is what enables the station to develop its local news and public interest programming.

In the case of network affiliates, it is the unique quality of our network and syndicated programming that makes our success possible. We are all justifiably proud of our own local news operation and our locally produced programming, but we could not keep our audience, and we could not survive, without good national programming to offer to our viewers -- programming that is exclusively ours -- not available from any other service. That is the key to our success.

Broadcasters are not the only ones who recognize the importance, and the value, of exclusive program rights. Satellite program services serving the cable industry and the home satellite market recognize the value of exclusivity. For example, Showtime has a five-year, $500 million exclusive contract for cable rights to 100 movies produced by Paramount Pictures. HBO entered into a five-year exclusive program supply contract with Paramount, to begin this year. Other program services are also aggressively pursuing exclusive program arrangements. We are in the same position. We must have exclusive programs in order to attract and serve our local audience.

We are confident that in considering this bill Congress does not intend to undermine the ability of local stations to continue to serve their markets. We understand that Congress is seeking to expand, not reduce, service to the public. But you should not underestimate the potential for damage this legislation could do. As I said at the beginning of my statement, we share the desire to see that as many people as possible receive our programming and we are working, and will continue to work, with our network and others in order to reach those last few homes. But that laudable goal does not justify destroying the exclusivity that is the mainspring of the network-affiliate relationship. This bill would deprive the network of control over distribution of its programming and make it impossible for the network to guarantee reasonable exclusivity to its affiliates. The ABC Affiliates and the ABC Network are currently negotiating with private carriers to see if we can develop a private contractual arrangement that would permit network signal distribution to viewers who are beyond the reach of our network signal. Let us all work together to find some other way--a better way--to serve those white areas than the legislative proposal currently before the Subcommittee.

We pledge to continue our efforts and will be happy to cooperate with the Subcommittee and its staff as it struggles with this problem.

Thank you.

Mr. **Kastenmeier**. Thank you, Dr. Sherman. We are delighted to have that addendum, your description that you were once a teacher at the University of Wisconsin Communications Department.

Incidentally, at this time I think it is appropriate to note that ABC, as a network, could not be present today for purposes of making its presentation, but, without objection, I would like to include its statement following that of Dr. Sherman to maintain some continuity for the record.

[The statement of ABC follows:]

STATEMENT OF
CAPITAL CITIES/ABC, INC.
ON H.R. 2848

SUBMITTED TO
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES
AND THE ADMINISTRATION OF JUSTICE
OF THE
HOUSE JUDICIARY COMMITTEE
JANUARY 27, 1988

Capital Cities/ABC, Inc. supports the important goal of providing television service to homes which cannot now receive service because they are beyond the reach of an over-the-air broadcast station signal or a local cable company (so-called "white area" homes). We believe that a means should be found to insure the availability of television service to white area homes both as a matter of sound public policy and because it is in our company's business interest that our network programming be as widely available to the public as possible.

We are opposed to H.R. 2848 in its present form because it fails to take into account the special nature of the network broadcasting system. We believe that if H.R. 2848 were to become law without modification it would undermine the foundation of the network distribution system. Each of the three major commercial networks is affiliated with over 200 local stations. Each local station has contracted for the exclusive right to broadcast network programming in its local area, those stations and the network reach 98% to 99% of all homes in the country. H.R. 2848 would disrupt this system by authorizing satellite carriers to retransmit any network affiliate on a nationwide basis not only to the 1% or 2% who cannot now receive the signals but to all homes. It would permit the importation of distant network stations with duplicated network programming in the home territory of every existing affiliate. The testimony of Mr. Charles E. Sherman, Chairman of the Government Relations Committee of the ABC Television Affiliates Association, fully describes the importance of exclusivity to network affiliates and the potential harm such an intrusion on exclusivity could cause.

We believe it would be highly undesirable to risk destroying the integrity of the basic network system in order to solve the problem raised by the very small portion of homes not presently reached by network affiliates. Such a radical solution is unnecessary, since less harmful alternatives are available and capable of implementation.

During the past year, with the cooperation and support of the ABC Television Affiliates Association, Capital Cities/ABC, Inc. has been actively examining a number of these alternatives. We have now formulated a plan pursuant to which we will authorize satellite distribution of our network programming to dish owners in white area homes. The development of scrambling technology and the use of addressable codes now makes it possible to provide dish owner service limited to white areas without duplicating the network programming already available to the vast majority of homes. We note that each of the other major networks has also publicly announced its intention to pursue a similar course of action. In one case, a contract with a carrier willing to serve only white areas has already been negotiated. We expect to announce a similar agreement and venture in the near future. These actions are fully responsive to the legitimate public policy concern that a solution be found to the white area problem.

In summary, we support the principle of insuring the availability of television service to white areas. However, we believe that the legislative solution embodied in H.R. 2848 as presently drafted would create more serious problems than it would solve and we also believe that with respect to network signals H.R. 2848 is premature and will ultimately be found to be unnecessary. Each of the networks is proceeding with business arrangements which hold great promise for solving the white area problem. We urge the Committee to permit the networks and their affiliates to follow that course to eliminate white areas -- recognizing that if we are unsuccessful legislative intervention remains an alternative for future consideration.

Mr. **Kastenmeier**. Now I would like to call on Mr. Malara of CBS.

Mr. **Malara**. Thank you, Mr. Chairman and members of the subcommittee. My name is Tony Malara, and I am vice president of affiliate relations and distribution for the CBS Television Network. I have done that for about nine years. Prior to that, I spent 21 years at a very small station, not in Wisconsin but in upstate New York, in Watertown.

I am pleased to be here today to offer CBS's views on H.R. 2848, and I am accompanied, on my right, by Phil Jones, who is vice president and general manager of KCTV in Kansas City, Missouri, who is representing the CBS Television Network Affiliates Advisory Board.

As you requested, in the interests of time, my statement will be brief.

We believe the fundamental interests of CBS, our 200-plus local affiliates, and the subcommittee, as evidenced by H.R. 2848, are largely in harmony. All of us are interested in having the unique combination of local and network television service that we offer available to every home in the United States, regardless of where that home is located. This common interest that we share is the reason why our affiliates and stations owned by CBS invest time and considerable capital in such things as increased transmitter power, taller towers, and hundreds and hundreds of translator stations that bring local television service to thousands of homes which would not otherwise enjoy such service. That is also why our affiliates, with the cooperation and assistance of CBS, formed a task force in 1986 to explore various ways to bring television service to more homes.

For the most part, I think everyone will agree that we have been remarkably successful in commercial television in bringing free over-the-air service to the public. No other video service is as widely available as the local-network service, and none is likely to be in the foreseeable future. Indeed, as you have already heard, according to FCC statistics, network television service reaches more homes in the United States—98 or 99 percent—than does local telephone service.

But CBS and its affiliates also recognize that these statistics mean very little to the homeowner in the valley or on top of the mountain who is beyond the reach of the local CBS affiliate. To address this situation and after considerable discussion and effort, CBS and our affiliates issued a statement at our affiliate board meeting last week in which we indicated that we are prepared to enter into a business arrangement which will permit network programming to be delivered by satellite to homes that cannot presently receive this service. While these arrangements are not in place as yet, we do believe they can be implemented within a reasonable period of time and with only modest changes in the legislation before you.

Our commitment to bring CBS service to "white areas" via satellite builds on one of the themes of H.R. 2848—that is, reliance on private party negotiations. In this regard, I trust you understand that we must maintain a degree of flexibility in order to implement a private agreement that fulfills the goals of this legislation.

First and foremost, it is absolutely essential that we protect the integrity of the affiliate-network partnership on which our business is built. Our affiliates, we believe, are entitled to reasonable expectations of exclusivity in the areas they are licensed by the FCC to serve, and we intend to protect this exclusivity through an appropriate and reasonable certification process to make sure that homes that desire network service by satellite are truly unserved.

Second, only after network service delivered by satellite is available to unserved homes will we complete the scrambling of our private network feeds to affiliated stations.

Finally, since we do not seek additional revenue from authorizing such satellite delivery, we also do not expect to incur any additional fees ourselves. We trust that everyone involved in bringing service to these relatively few homes will approach this matter in the same spirit of cooperation.

Let me conclude, please, by mentioning one final point. CBS does not view this legislation in terms of competition of one kind or another. If there are concerns in this regard, they can only be addressed in the context of overall communications policy. Our mission here is less cosmic, though clearly not any less important to people in remote parts of this country. What we believe all of us are trying to accomplish through this legislation is to facilitate access to television service in remote areas that do not now enjoy such service—nothing more but nothing less. With the assistance of our affiliates and with your help, CBS believes this objective can be accomplished in the very near future.

Mr. Chairman and members of the committee, thanks for your patience and leadership in this matter. We look forward to working with you and the subcommittee. Mr. Jones and I will be happy to attempt to answer any questions that you or other members of the committee may have.

[The statement of Mr. Malara follows:]

STATEMENT OF ANTHONY C. MALARA

VICE PRESIDENT, AFFILIATE RELATIONS AND DISTRIBUTION

CBS TELEVISION NETWORK

* * *

Before the
Subcommittee on Courts, Civil Liberties,
and the Administration of Justice
U.S. House of Representatives

* * *

January 27, 1988

My name is Tony Malara. I am Vice President, Affiliate Relations and Distribution, CBS Television Network. I am pleased to be here today to offer CBS's views on H.R. 2848. I am accompanied by Philip A. Jones, Vice President and General Manager of KCTV, Kansas City, Missouri who is representing the CBS Television Network Affiliates Advisory Board. In the interest of time, my statement will be brief.

We believe the fundamental interest of CBS, its 200 plus local affiliates and the Subcommittee as evidenced by H.R. 2848 are largely in harmony. All of us are interested in having the unique combination of local and network television service that we offer available to every home in the United States, regardless of where that home is located.

This common interest that we share is the reason why our affiliates and the stations owned by CBS invest time and considerable capital in such things as increased transmitter power, taller towers, and hundreds of television translators that bring local television service to thousands of homes that otherwise would not enjoy such service. That is also why our affiliates -- with the cooperation and assistance of CBS -- formed a task force in 1986 to explore various ways to bring television service to more homes.

For the most part, we have been remarkably successful in bringing free, over-the-air service to the public. No other video service is as widely available as the local-network service, and none is likely to be in the foreseeable future. Indeed, according to FCC statistics, network television service reaches more homes in the U.S. -- 98 or 99% -- than does local telephone service.

But CBS and its affiliates also recognize that these statistics mean very little to the homeowner in the valley or on the top of the mountain who is beyond the reach of the local CBS affiliate. To address this situation, and after considerable discussion and effort, CBS and its affiliates issued a statement at our Affiliate Board meeting last week in which we indicated that we are prepared to enter into a business arrangement which will permit network programming to be delivered by satellite to homes that cannot presently receive this service. While these arrangements are not in place as yet, we believe they can be implemented within a reasonable period of time and with only modest changes in the legislation before you.

Our commitment to bring CBS service to "white areas" via satellite builds on one of the themes of H.R. 2848 -- reliance on private-party negotiations. In this regard, I trust you understand that we must retain a degree of flexibility in order to implement a private agreement that fulfills the goals of this legislation.

First and foremost, it is absolutely essential that we protect the integrity of the affiliate-network partnership on which our business is built. Our affiliates are entitled to reasonable expectations of exclusivity in the areas they are licensed by the FCC to serve, and we intend to protect this exclusivity through an appropriate and reasonable certification process to make sure homes that desire network service by satellite are truly unserved. Second, only after network service delivered by satellite is available to unserved homes will we complete the scrambling of our private network feeds to affiliated stations. Finally, since we do not seek additional revenue from authorizing such satellite delivery, we also do not expect to incur any additional fees ourselves. We trust that everyone involved in bringing service to these relatively few homes will approach this matter in the same spirit of cooperation.

Let me conclude by mentioning one final point. CBS does not view this legislation in terms of competition of one kind or another. If there are concerns in this regard, they can be addressed only in the context of overall communications policy. Our mission here is less cosmic, though clearly not any less important to people in remote parts of this country. What I believe all of us are trying to accomplish through this legislation is to facilitate access to television service in remote areas that do not enjoy service now;

nothing more, but also nothing less. With the assistance of our affiliates and your help, CBS believes this objective can be accomplished in the very near future.

Mr. Chairman, thank you for your patience and leadership on this matter. We look forward to working with you and the Subcommittee. Mr. Jones and I will be happy to attempt to answer any questions that you or the other Members may have on this subject.

Mr. **Kastenmeier.** Thank you, Mr. Malara, for that presentation, and we are pleased to also greet Mr. Jones.

I take it, Mr. Jones, that anything you would have said would be in agreement both with the statement of Mr. Malara and the statement of those representing network affiliates in the other two networks.

Mr. **Jones.** Absolutely.

Mr. **Kastenmeier.** Thank you.

Now I would like to call on Mr. Brian McCauley. Mr. McCauley is president of Netlink. We have heard references to Netlink. He is the person who runs that particular operation. We are delighted to have him here.

Mr. **McCauley.** Thank you, Mr. Chairman. My name is Brian McCauley, and I am the president of Netlink USA which is headquartered near Seattle, Washington.

At the beginning, I would like to thank you, Mr. Chairman, and the members of the committee for the opportunity to testify on H.R. 2848. The bill which you and an increasing number of your colleagues have cosponsored clearly is the most important piece of legislation for home satellite dish owners under consideration by the 100th Congress. Netlink strongly supports this legislation, and its passage is essential to preserve some of the most popular programming now available to dish owning families. Without it, we strongly believe, hundreds of thousands of primarily rural Americans will be deprived of network and independent television programming.

Netlink USA is a company that serves home dish owners and in some cases cable subscribers in several different ways. First, in cooperation with the major networks, we have devised and are now testing a plan to provide network-affiliate broadcast signals from Denver, Colorado, to dish owners who cannot otherwise receive network television from a local affiliate.

Second, Netlink acts as a marketing and authorization agent for many cable operators who want to achieve economies of scale in serving home dish owners in their respective service areas.

Third, Netlink provides a means by which cable communities in the Rocky Mountain region can receive Denver television signals more easily and efficiently than by the microwave transmissions which traditionally have been employed.

I would like to discuss the first two functions for a moment since without these cable programs Netlink could not effectively provide its "white area" service to dish owners. During Netlink's crucial start-up period, almost half its operating revenue will come from the service we provide to cable companies as a satellite carrier for the Denver broadcast stations to cable head ends that formerly received these signals by microwave or did not receive them.

But for this near-term revenue from cable companies it would be impossible for us to lease transponders to secure uplink facilities and to organize ourselves so that we can provide network affiliate service to home dish owners.

We have found that the cable industry and the home dish industry have synergies which can operate to their mutual benefit. In fact, their interests are often the same as in the case of this legislation. The challenge for Netlink has been to negotiate, to organize ourselves, and to operate in such a manner that cable scale economies and industry structure could be used to serve the interests of both dish owners and cable itself and, at the same time, serve what we believe to be an important public policy goal, that of providing network affiliate television to the hundreds of thousands of primarily rural Americans who cannot now receive it.

We estimate that there are as many as a million households in the United States that are beyond the reach of one or more of their local network affiliates. To people in these "white areas", as they are termed in the industry, the satellite dish is a godsend. They have no other alternative for obtaining the cable and off-air broadcasts that most of us take for granted. Even with a dish, reception remains a problem, and these viewers have been forced to watch the network feeds. However, the feeds are not a finished product meant for public viewing, and we all realize that networks will soon be scrambling their feeds.

Netlink's plan to serve "white areas" is fundamentally different from those of others that have been challenged in court. We start from the premise that the network affiliate system has served the country very well for decades. The strength and vitality of the affiliates must be preserved. We believed it was possible to design a program for underserved areas that would not undermine the rights of local affiliates.

We have made formal approaches to all three of the major networks and other networks as well, seeking advice on how we could market the service to "white area" dish owners and address their concerns and that of their affiliates at the same time. NBC was the first to respond with concrete suggestions, and we applaud them on that.

Subsequent negotiations led to the exchange of letters which was announced in the presence of you, Chairman Kastenmeier, and Congressman Moorhead last spring. Negotiations with ABC have moved slowly, but network officials have recently indicated a renewed interest in concluding satisfactory commercial arrangements soon. The situation with CBS is less clear, but we are optimistic based on their recent statements and look forward to completing a deal with them as well.

It is important to recognize that none of the networks, including NBC, have as yet signed a binding agreement granting Netlink the rights to distribute network programming. The exchange of letters with NBC contains a set of terms which we hope will form the basis for such contracts.

Now the NBC term sheet has two important features. First, Netlink would agree to provide the Denver affiliate signals only to dish owners that could not otherwise receive a local NBC affiliate off-air via cable. "White area" screening is subject to review by local NBC affiliates.

The second important feature addresses a legitimate concern of the network affiliate boards. With certain minor exceptions, Netlink has agreed not to provide the Denver network affiliate signals to any cable system within the grade B broadcast contour of a respective local network affiliate. This represents a major concession by Netlink since the cable compulsory license would allow service to cable head ends with very few restrictions.

We are currently test marketing all three networks now to consumers based on the terms of the NBC agreement, and because of that test marketing arrangement and the lack of conclusion of all our documents have not at this time licensed any other distributors, programmers, or anyone else to distribute our signal but will deal with that in the future after the conclusion of our agreements with all three networks.

I would now like to offer some comments on the pending legislation. First, Netlink strongly supports H.R. 2848. Without it, we believe "superstation" programming could ultimately disappear.

Second, we strongly suggest that in the definition of "satellite carrier" which appears on page 17 of the bill all references to common carriers be deleted. Such language would impose limitations beyond that which exists for the cable compulsory license. The cable compulsory license uses the term "any carrier," and the courts have construed that terminology to encompass more than traditional common carriers as we believe the committee intended. Netlink does not believe a dish owner's compulsory license should be any more restrictive than that enjoyed by cable subscribers.

Third, Netlink believes the grandfather provision in the definition of "superstation" on page 18 of the bill needs fine tuning. As the bill now reads, a station transmitted by a satellite carrier after June 1, 1987, could only gain "superstation" status by achieving carriage in cable systems serving 10 percent of all cable subscribers. The provision would allow the largest two or three multiple system operators in cable, acting alone or in concert, an inordinate degree of influence, by operation of law, over the creation of new "superstations," a power we believe they neither need nor want.

We suggest that no more than 10 percent of the number of cable systems required to qualify may be owned by any one company. Under such a formulation, those seeking to qualify a new "superstation" would have to deal with the smaller cable companies as well as the larger ones, thereby guaranteeing that a new "superstation" would have broad public support.

Finally, Netlink believes the committee will eventually find it necessary to deal with the extension of the bill's compulsory license to network signals. Several options are available to you that serve both the needs of viewers and the networks. However, we do not believe the networks may be excluded from the bill altogether.

Talks with the networks have proceeded slowly, with the exception of NBC. We suspect that a decision by the committee to exclude network affiliate "superstations" from this bill would reduce the chances for network "white area" service agreements with Netlink or any other satellite carrier.

In conclusion, let me say that Netlink intends to work actively with the networks to conclude these deals. All of us realize "white area" service is important, and all are grappling with the important ramifications that this deals with. Netlink stands ready in the coming weeks to work with the committee to formulate a bill which protects legitimate rights of the local affiliates yet still clarifies and secures the rights of dish owners to receive network television.

Thank you for the opportunity to testify.

[The statement of Mr. McCauley follows:]

SUMMARY

My name is Brian McCauley. I am President of Netlink USA. Our company is headquartered near Seattle, Washington.

Netlink strongly supports H.R. 2848. We think its passage is essential to preserve superstation programming for home dish owners.

Netlink's major business is providing programming services to home satellite dish owners, including a service of interest to you today -- our "white area" dish program.

Before discussing that program in more detail, I would like to stress that the start-up revenues Netlink has gained from certain services we offer to cable companies have been indispensable. We carry broadcast signals by satellite from Denver to cable headends, most of which formerly relied on microwave for that service. Netlink also acts as a common marketing agent and backroom for cable companies who want to serve their satellite dish customers more efficiently with a broad range of programming.

We have found that in these instances and many others, there are substantial synergies between the cable and home satellite dish industries. Often, as in the case of this legislation, their interests are the same.

From a public policy standpoint, our most important effort is to provide network affiliate signals from Denver to dishowners who cannot receive network television from a local affiliate. Our intent from the outset has been to provide a "white area" service which does not undermine local affiliates.

To that end, we have sought agreements from the major networks and others regarding our "white area" service. No final and binding agreements have been reached. However, the outlines of a basic agreement are now on the table.

NBC was the first to respond by suggesting a program whereby Netlink would be granted permission to serve "white area" dishes, subject to veto by local affiliates in individual cases. Netlink would promise not to serve cable headends within the broadcast areas of any local affiliate, subject to certain grandfather provisions.

Negotiations with ABC have been very lengthy, but we hope agreement is near. The CBS affiliate board apparently has grave reservations about the Netlink concept, so we cannot predict the outcome of our talks with CBS.

I would like to respectfully offer some suggestions regarding the legislation you have before you. First, the definition of "Satellite Carriers" in this bill is more restrictive than that for the cable compulsory license. It requires a common carrier licensed by the FCC. The cable compulsory license allows "any carrier" to serve cable subscribers. We do not believe superstation service should be more expensive and cumbersome for dish owners than for cable subscribers. Therefore, we suggest all references to "common carriage" be deleted from the bill.

Second, the grandfather provisions of the bill grant large cable companies inordinate power to make or break new superstations -- a power which we believe they neither need nor want. Superstations placed on a satellite after June 1, 1987, require carriage in cable systems totaling 10 percent of the nation's cable subscribers to qualify for a compulsory license. A few large multiple system operators, acting alone or in concert, could qualify any new station. We believe there should be a strict limit on the subscribers any one company can provide to meet the 10 percent limit. This would insure that superstation carriers would also have to talk to smaller cable companies in order to qualify and help insure that any superstation has broad public appeal.

Finally, we think the Committee will eventually have to address the bill's coverage of network programming. Unlike the independent stations, a majority of a local network affiliate's programming would be precisely duplicated if a network superstation were beamed into its broadcast area.

One preferred alternative would be to exclude from the compulsory license network programming which appears on an affiliate superstation, where a network has a non-exclusive commercial agreement to serve "white areas." There are other possibilities, as well. However, we cannot support exclusion of the networks from the bill altogether.

Thank you for the opportunity to testify. I would be happy to answer questions.

STATEMENT OF BRIAN J. McCAULEY

PRESIDENT, NETLINK USA

ON H.R. 2848

Before the Subcommittee of Courts, Civil Liberties
and The Administration of Justice

Committee on the Judiciary

UNITED STATES HOUSE OF REPRESENTATIVES

January 27, 1988

My name is Brian McCauley. I am President of Netlink USA, headquartered in Kirkland, Washington. At the outset, I would like to thank you, Mr Chairman, and Members of the Committee, for the opportunity to testify on H.R.2848. The Bill, which you and an increasing number of your colleagues have co-sponsored, clearly is the most important piece of legislation for home satellite dish owners under consideration by the 100th Congress. Its passage is essential to preserve some of the most popular programming now available to dish-owning families.

Before I briefly tell you about our company and get into the body of my testimony, please let me express the admiration of almost all of us in the industry for the excellent job you, your colleagues and your staff have done in building a remarkable consensus in favor of this bill. You have drafted legislation that, in its general principles, has gained the support of a number of constituencies that regrettably find themselves on opposite sides of many legislative issues. You have revealed for us, in the context of this legislation, a common bond that should unite us in many more instances than it does, and that is our common interest in what is best for the television-viewing public.

Netlink USA is a company that serves home dish owners and, in some cases, cable subscribers in several different ways.

First, in cooperation with the major networks, we have devised and are now testing a plan to provide network affiliate broadcast signals from Denver, Colorado to dish owners who cannot otherwise receive network television from a local affiliate.

Second, Netlink acts as a common agent for many cable operators who want to achieve economies of scale in serving home dish owners in their respective service areas.

Third, Netlink provides a means by which cable communities in the Rocky Mountain region can receive Denver television signals more easily and efficiently than by the microwave transmissions which traditionally were employed.

Although Netlink is probably best known by the Committee for the first function I mentioned - our "white area" dish program- I would like to discuss the other two functions for a moment, since without these cable programs Netlink could not effectively provide its "white area" service to dishowners.

During Netlink's crucial start-up period, almost half its operating revenue will come from the service we provide to cable companies as a satellite carrier for the Denver broadcast stations to cable headends that formerly received those signals by microwave. But for this near-term revenue from cable companies, it would have been impossible for us to obtain transponders, to secure uplink facilities and to organize ourselves administratively for the provision of network affiliate service to home dish owners.

Likewise, our relationship as a common agent to many different cable companies with hundreds of local offices across the nation will provide much needed start-up revenues as well as some reassurance to the major networks with whom we have been dealing that we will be able to police a "white area" dish program. Currently, we have written agreements with about 40 cable companies and about 50 more have requested contracts from us. Only two are among the top ten multiple system operators. Netlink will provide a common backroom and national marketing capabilities for participating cable companies so they can serve their dish-owner customers more effectively, but, in return, the cable companies provide a measure of local presence which we believe the Networks find reassuring when fashioning a "white area" dish program acceptable to them.

In these two instances, and others as well, we have found that the cable industry and the home dish industry have synergies which can operate to their mutual benefit. In fact, their interests are often the same, as is the case on this legislation. The challenge for Netlink has been to negotiate, to organize ourselves and to operate in such a manner that cable's scale economies and industry structure could be used to serve the interests of both dish owners and cable itself and, at the same time, serve what we believe to be an important public policy goal - that of providing network affiliate television to thousands of primarily rural Americans that cannot now receive it.

We estimate there are as many as a million households in the United States that are beyond the reach of one or more of their local network affiliates. Most are simply too far out in rural areas to receive a viewable picture. Some may actually be within a local affiliate's broadcast area, but broadcast transmissions are blocked by terrain features or man-made obstacles. In many cases, these households cannot be economically served with broadcast television by cable, translator or other means.

To people in these "white areas", as they are termed in the industry, the satellite dish is a God-send. They have no other alternative for obtaining the cable and off-air broadcasts that most of us take for granted. Even with a dish, however, reception of the nation's most popular programming, that offered by the major network affiliates, remains a problem. With a local signal out of reach, these viewers have been forced to watch the networks feeds which are currently unscrambled and available for anyone with a dish to see. However, the feeds are not a finished product meant for public viewing. Beyond that, we all realize the networks will soon be forced to scramble their feeds as the number of satellite home dishes increases. The network can hardly offer its affiliates exclusive network programming when it is widely available, off-satellite and unscrambled.

Recently, other companies have sought to fill the void by uplinking scrambled network affiliate signals from major cities in the United States for sale to dish owners throughout the country without restriction. Predictably, the network affiliates, programming copyright owners and the networks themselves have reacted negatively to these operations and litigation is in progress.

Netlink's plan is fundamentally different than those which have been challenged in court. We start from the premise that the Network Affiliate system has served the country well for decades. The strength and vitality of the affiliates must be preserved. We believed it was possible to design a program for underserved areas that would not undermine the rights of the local affiliates.

To that end, we selected broadcast stations from Denver for distribution in the belief that they would prove less threatening to the affiliate boards than stations from New York, Chicago, or Los Angeles. The Denver affiliates are all excellent stations and Denver itself is an All-American city in every respect. Nevertheless, we believed the appeal of these affiliate signals could be more easily limited to those who truly could not receive local affiliate broadcasts. In addition, we felt that distributing broadcast stations from the Rocky Mountain time zone would minimize affiliate concerns about adverse time-shifting in the populous areas to the east.

At that point, we made formal approaches to all three of the major networks and other networks, as well, seeking advice on how we could market the service to "white area" dish owners and address their concerns and that of their affiliates at the same time. We found that all the networks and their respective affiliate boards were aware of and concerned about service to "white areas".

NBC was the first to respond with concrete suggestions. Subsequent negotiations led to an exchange of letters which was announced in the presence of Chairman Kastenmier and Congressman Moorhead last spring. Negotiations with ABC have moved very slowly, but network officials have recently indicated a renewed interest in concluding a mutually satisfactory commercial arrangement soon.

The situation at CBS is much less clear. Leadership of the affiliate board has often been quoted reacting negatively to the Netlink concept. On the other hand, we have maintained sporadic contact with network officials who are quite aware of the public policy issues at stake here. We can not predict how our conversations with CBS will be resolved.

It is important to recognize that none of the networks, including NBC, have yet signed a binding agreement granting Netlink the rights to distribute network programming. The exchange of letters with NBC contains a set of terms which we hope will form the basis for such contracts.

The NBC term sheet has two important features. First, Netlink would agree to provide the Denver affiliate signals only to dish owners that could not otherwise receive a local NBC affiliate off-air or via cable. "White area" screening is subject to review by local NBC affiliates. If a local affiliate determines that it does, indeed, serve a Netlink customer, Netlink has 30 days to terminate his or her service.

The second important feature is not directly related to dish owner service, but, nevertheless, addresses a legitimate concern of the network affiliate boards. With certain minor exceptions, Netlink has agreed not to provide the Denver network affiliate signals to any cable system within the Grade B broadcast contour of a respective local network affiliate. This represents a major concession by Netlink since the cable compulsory license would allow service to cable headends with very few restrictions.

I would now like to offer some comments on the pending legislation. First, Netlink strongly supports H.R.2848. Without it, we believe superstation programming for home dish owners would ultimately disappear. Under current conditions in this business, the rights of all parties - even in a program designed as carefully as Netlink's - are not well-defined. Netlink believes Congress must act on this bill, or similar legislation, to adapt existing copyright law to this important new satellite dish technology.

We do not believe this is a matter that can or should be resolved by the courts. There is a balance to be struck here between public policy and private property rights, and it demands a legislative solution.

Second, we strongly suggest that in the definition of "Satellite Carrier" that appears on page 17 of the bill, all references to "common carriers" be deleted. Such language would impose limitations beyond that which exists for the cable compulsory license. The cable compulsory license uses the term "any carrier", and the courts have construed that terminology to encompass more than traditional common carriers, as we believe the Committee intended. Netlink does not believe a dish owner's compulsory license should be more restrictive in this respect than that enjoyed by cable subscribers.

Requirements for common carriage would require those serving this marketplace to adopt cumbersome and expensive organizational structures. It would eliminate any possibility for meaningful third-party distributorship, since common carriers, under these particular legal circumstances, would have substantial commercial incentives for maintaining privity between themselves and their dishowner customers. This means more expense and less convenience for the dish owner.

The additional requirement that a "common carrier" be licensed by the Federal Communications Commission is particularly burdensome. The Commission no longer licenses satellite common carriers, as such. As part of its deregulation program, the F.C.C. permits any carrier to utilize transponder and uplinking facilities. Why impose a special hurdle for those seeking to serve home dish owners? In fact, a bill that could be read to require the Commission to change its common carrier policies may well invite attention from other Congressional Committees with primary jurisdiction over the F.C.C. All of us can agree, I think, that lengthy consideration and amendment of H.R.2848 by other Congressional committees will not improve its chances for passage.

Third, Netlink believes the "Grandfather" provisions in the definition of "Superstation" on page 18 of the bill need fine-tuning. As the bill now reads, a station transmitted by a satellite carrier after June 1, 1987, could only gain superstation status by achieving carriage in cable systems serving 10 per cent of all cable subscribers. The provision would allow the largest two or three Multiple System Operators in cable, acting alone or in concert, an inordinate degree of influence, by operation of law, over the creation of new superstations -- a power they neither need nor want. We suggest that no more than 10% of the number of cable systems required to qualify may be owned by any one company. Under such a formulation those seeking to qualify a new superstation would have to deal with the smaller cable companies as well as the larger ones, thereby guaranteeing that a new superstation would have broad public support.

Finally, Netlink believes the Committee will eventually find it necessary to deal with extension of the bill's compulsory license to network signals. Several options are available to you, including the preferred one of extending the compulsory license only to non-network programming on a network affiliate superstation, where the network has concluded a "white area" commercial agreement. Another is applying a compulsory license only to "white areas" that cannot receive a local network affiliate signal.

There is more than ample justification for modifying the application of the bill to network affiliate superstations and not to independent superstations. By definition, a substantial majority of a local network affiliate's programming would be precisely duplicated if a sister network affiliate's signal were beamed into its broadcast area by satellite. On the other hand, it is likely that none, or only a small percentage, of a local independent's programming would be precisely duplicated by a distant independent superstation. Clearly, the Committee can, with good conscience, take special account of concerns raised by the Networks without honoring similar claims by the independents.

Moreover, trade associations representing the independent stations are strongly supporting an F.C.C. rulemaking to reimpose an old-fashioned concept of syndicated exclusivity which would strip superstation programming from the satellites for cable subscriber and dish owner alike. This hardly qualifies them as a voice to be reckoned with when fashioning a bill to secure superstation access by dish-owning families.

However, we do not believe the networks may be excluded from the bill altogether. Talks with the networks have proceeded slowly with the exception of NBC. We suspect that a decision by the committee to exclude network affiliate superstations from the compulsory license in H.R.2848 would reduce the chances for network "white area" service agreements with Netlink or any other satellite carrier.

Moreover, the Committee must keep in mind that network programming constitutes a majority, but not all of the programming on a typical network affiliate. An affiliate may have as many as 30 or 40 other rights holders to deal with, over and above its network. Without some form of dish owner compulsory license covering this non-network programming, "white area" service with an affiliate signal may be impractical.

In conclusion, let me say that Netlink intends no criticism of the networks or their affiliate boards. Each realizes "white area" service is important, but all are grappling with ramifications that are extremely important to them. Netlink stands ready in the coming weeks to help the committee formulate a bill which protects legitimate rights of the local affiliates, yet still clarifies and secures the rights of dish owners to receive network television.

Mr. **Kastenmeier**. Thank you, Mr. McCauley.

Last, we would like to call upon Mr. Preston Padden, who is president of the Association of Independent Television Stations.

Mr. **Padden**. Thank you, Mr. Chairman. You have my testimony, and with your permission I will request that it be submitted for the record, and I will attempt to summarize it briefly.

Mr. **Kastenmeier**. Without objection, that will be agreed to.

Mr. **Padden**. The first point we make in our testimony is that it is our view that it is fundamentally unfair to require broadcasters to pay marketplace prices for programming while granting compulsory licenses at statutory or arbitrated rates to our cable and satellite competitors.

Broadcasters purchase all of their programming in the marketplace without any compulsory license, and independent stations in particular who don't enjoy a network feed have to purchase every single program they broadcast from sign-on in the morning until sign-off at night without the benefit of any compulsory licensing. As a result, even though our stations account for only one-third of the total number of television stations, our program purchases account for about 70 percent of all television program purchases.

It is no wonder to us that everyone comes before this subcommittee seeking a compulsory license for programming. Television programming is very, very expensive. Currently, program expenses account for about half of the cost of operating an independent television station, and high program prices have played a prominent role in the fact that, as we sit here this morning, there are 23 independent stations across the country that have gone into bankruptcy in the last year alone.

I would like to give you a few examples of program prices set in the marketplace to give the subcommittee a feel for what programming really costs. According to Variety, Station KCOP in Los Angeles has been required by marketplace forces to pay a price of $225,000 per week for the exclusive rights in the Los Angeles market to broadcast the reruns of the Cosby Show. Over the three-and-a-half-year term of that license agreement, the station will pay $41 million for one single half-hour television program, and that is not an isolated example. According to the same article, Station KHJ is required by market forces to pay $240,000 a week for an exclusive license to the program, Who's The Boss. That is almost a million dollars a month.

Some have raised doubts as to whether broadcasters are really purchasing exclusive rights, and to end any doubt about that we have attached to our testimony copies of the exclusivity provisions of two actual independent station program licenses.

Now if H.R. 2848 is enacted in its present form, these multi-million-dollar exclusive contracts will be rendered absolutely meaningless. Satellite carriers will be granted a license to exhibit in our markets the very same programs we have paid all this money for exclusive licenses for a fee of 12 cents per subscriber per month.

I want to emphasize that we are not here this morning seeking protection from competition. Our stations understand that they are going to face more competition from a variety of video sources. And we are not here seeking any subsidy from this subcommittee. We are not even here seeking a guarantee that we will be successful in attempting to negotiate exclusive program rights. That is a task we have to face in the marketplace.

Our position is simply that if we pay the market clearing price for an exclusive license for a program, then the copyright laws of this country ought to honor and respect that contract. In this increasingly competitive marketplace, exclusive program rights are really the only tool we have to seek to distinguish our service and to compete with the many new video sources we are facing, and if you take away our opportunity to secure exclusive program rights, you will be taking away our opportunity to compete.

The second point of my testimony is that imminent technological advances make this a particularly inappropriate time to be considering a compulsory license for the satellite industry, and I have asked Jim Hedlund, our vice president for Government relations to give any of you who are interested a chance to look close-hand, and touch, and feel the next generation of satellite-receiving antennas.

Congress doesn't change our copyright laws often or easily, and we don't think that legislation should be considered without considering where the technology appears to be going. This antenna (indicating exhibit) was purchased off the shelf in the Japanese equivalent of a Radio Shack store a few months ago in Japan. It cost only 1,000 devalued American dollars, and we assume that when it gets into mass production it will cost even less. This flat panel antenna is currently receiving outstanding pictures from a high-powered KU-band satellite in operation in Japan. Those satellites are not yet in operation in this country, but the fact that the Japanese have printed the words "flat antenna" and "broadcasting satellite" in American English on the face of that antenna gives us some idea of the market they hope to exploit.

We think, in particular, that the subcommittee has got to give very careful attention to the sunset provision of this bill in light of where the technology is going. We don't want to sound like Chicken Little, but we think eight years from now you could be confronted with the political reality of millions and millions of Americans used to receiving television service through these antennas based on a compulsory license, and it is not at all clear to me what the Congress would do at that point or exactly how the transition mechanism that seems to be contemplated by this bill would really work.

The third point in our testimony is that, if adopted, H.R. 2848 should be amended to apply to so-called "white areas" and/or to provide for the recognition of exclusive program license agreements that have been negotiated in the free marketplace. It is obvious from the discussion this morning that a main objective of this bill is to bring television service to rural viewers. In our view, that is a very worthy goal, but it has not been established that it can't be accomplished without compulsory licensing from the Government.

We have provided each member of the subcommittee with a list of the 71 different television markets in which our members over the last 7 years went out and established the first local, free, over-the-air independent television station. Now we would assert, without meaning to be boastful, that bringing the first local, independent service to these 71 markets is as worthy a goal as bringing service to rural residents, and yet our members accomplished this goal without coming to the subcommittee and asking for a compulsory license.

Even if we accept the argument that a compulsory license is necessary, H.R. 2848, to us, seems overly broad and unnecessarily destructive of the individual program licenses negotiated by local broadcasters. If the goal is to bring service to rural Americans, for the life of us we can't figure out why this bill applies to urban markets that are already receiving television service from their local television stations.

We believe it is critical, if the bill is going to move forward, that it be amended to apply only to "white areas" and/or to include some provision for recognizing and honoring local station exclusive program licenses, and we would point out that the cable compulsory license, when it was adopted by the Congress, was carefully limited and qualified by reference to FCC rules, including network nonduplication and syndicated exclusivity protection.

If H.R. 2848 were enacted in its present form, it would be the very first time the United States Congress passed a law that said local television station program contracts don't mean anything.

In drafting these amendments we think it is critical that the subcommittee avoid any invidious distinctions between independent television stations and network-affiliated television stations. There is no valid copyright distinction that can be made between a network station's program contracts and the program contracts of an independent television station. Going down that road gets you very, very deeply into major issues of communications policy, and we would urge the subcommittee to avoid any discrimination like that, and we would point you particularly to the testimony of the Motion Picture Association of America which expressed their support for the concept that the legislation should deal even-handedly with network affiliate stations and with independent stations.

The final point in our testimony is that the loss of the FCC's cable television "must carry" rules cries out for compulsory license reform. I certainly don't want to leave the impression that we are blaming this subcommittee or any of its members for the loss of the FCC's "must carry" rules; we understand that was not your doing. But we believe that the passage of H.R. 2848 would compound and complicate the gross inequity that is now evident in the cable marketplace.

In the years leading up to the 1976 act, broadcasters were the big guys in this business and cable was the struggling new entrant. Well, we all know that has now changed. Cable is the giant, and hundreds of new local, independent stations are viewed as nothing more than unwanted competition by the cable giants.

As things now stand, cable can use its compulsory license, its free compulsory license, for local stations to take all the stations they need to build the base of the service they need to sell to their customers. At the same time, they are free to drop local stations, and I am sorry to say that just last week one of our member stations in Columbus, Ohio, was dropped by a local cable system, and to make him feel even worse, he was replaced by a mechanized crawl that simply tells viewers what is on the other cable channels. The same station has been threatened with being dropped by another major cable system, and they propose to replace him with a home shopping service in which the cable operator has an equity interest. I think the motivation for that particular change is perfectly obvious.

All across the country we are seeing cable systems refuse to carry new stations, signing on, licensed by the FCC to serve those communities, and in markets across the country cable systems remain free to duplicate the programs that local stations have purchased in the free marketplace.

We would urge this subcommittee to place a high priority on reviewing the cable compulsory license. At a minimum, it seems to us that the continued availability of that license should be conditioned upon the cable industry's commitment to a reasonable "must carry" regime.

In concluding, I just want to reemphasize, we are not here seeking protection from competition; I don't think that is what this bill is about; we know we are going to face competition. We are not seeking a subsidy. We are not seeking a guarantee from you that we will get exclusive program rights. But when we pay the market clearing price for those rights, we think we deserve to have our contracts honored.

Thank you very much.

[The statement of Mr. Padden follows:]

TESTIMONY OF

PRESTON R. PADDEN
PRESIDENT
ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC.

BEFORE THE
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES AND THE
ADMINISTRATION OF JUSTICE; COMMITTEE ON THE JUDICIARY;
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON H.R. 2848

JANUARY 27, 1988

Thank you Mr. Chairman. My name is Preston Padden and I am President of the Association of Independent Television Stations, Inc., commonly known as INTV. We appreciate this opportunity to present our views on H.R. 2848.

INTV represents more than 170 Independent television stations across the country. My testimony today proceeds from the perspective of local television stations. Some of the stations whose signals are distributed nationwide by so-called "satellite carriers" may have a different perspective on certain aspects of the issues we discuss today.

Mr. Chairman, we have the greatest respect for you and for the co-sponsors of H.R. 2848. However, INTV respectfully must oppose this bill, in its current form, for four separate reasons. First, since broadcasters must purchase all of their programming in the open marketplace, it is fundamentally unfair for the government to confer statutory licensing preferences upon our various media competitors. Second, the imminent prospect of dramatic technological innovations, including in particular small flat panel satellite antennas, makes this a particularly inappropriate time to confer sweeping new copyright preferences upon the satellite industry. Third, assuming, arguendo, that a new compulsory license is necessary to bring television service to rural dish owners, that license should be limited to so-called white areas, carefully defined, and/or should provide some mechanism for recognizing and honoring exclusive program contracts negotiated in the free marketplace by parties who have not been favored with a statutory license. Finally, in light of the recent court decision invalidating the cable television must-carry rules the Congress should revisit the *cable* compulsory license, and the manifest inequities in that marketplace, *before* adopting new statutory licenses for other media.

I. It Is Inappropriate Copyright Policy To Require Broadcasters To Pay Marketplace Prices For Programming While Granting Compulsory Licenses At Statutory Or Arbitrated Rates To Cable And Satellite Competitors.

Broadcasters must purchase all of their programming without the benefit of any compulsory copyright license from the government. Independent stations, operating without network program feeds, must purchase or produce each and every individual program they broadcast from sign-on in the morning to sign-off at night.

Program license fees, set by the forces of the marketplace, represent the single largest cost category in the operation of an Independent television station. Currently, these fees constitute approximately one half of the total expenses of the average Independent station. In fact, high program costs have been a major contributing factor to the financial difficulties of the 23 Independent stations forced into bankruptcy proceedings in the last year.

A few examples of individual programs will give the Subcommittee some feel for the real cost of programming in the free market. According to *Variety* (June 24, 1987 at p. 60), market forces required Independent station KCOP-TV to pay $225,000 *per week* for an *exclusive* license to exhibit the re-runs of *The Cosby Show* in the Los Angeles market. Over the 3½ year license term, KCOP-TV will pay a cash fee of almost Forty One Million dollars for this *one*, single half-hour program. The total cost is even higher since the program distributor also receives two extremely valuable thirty second "barter" spot announcements in each telecast to sell on his own account. By contrast, H.R. 2848 grants "satellite carriers" a statutory license to exhibit another station's entire program schedule, including The Cosby Show, anywhere in the United States, including the Los Angeles market, for a government prescribed fee of 12 cents per month per subscriber.

In another example from the same Variety story, Independent station KHJ-TV will pay $240,000 per week, or almost One Million Dollars per month, for an exclusive license to exhibit the re-runs of Who's The Boss? in the Los Angeles market. Again, this figure contrasts sharply with the 12 cents per month figure in H.R. 2848.

All of the expensive programming purchased by broadcasters is presented free of charge to the American people. By contrast, cable and satellite exhibitors charge the American people for their services. If Congress wants to subsidize the program expenses of any of these competitors by granting a statutory licensing preference, the most obvious candidate for this largess would be the free over-the-air broadcasters. However, if H.R. 2848 is enacted, free broadcasters will be the only one of these media competitors to remain mired in the copyright marketplace. From our perspective, the public interest priorities appear to be inverted.

If the Congress does not want to encourage free local broadcasting by granting our stations a compulsory license, at the very least, the copyright laws should honor and respect the program contract that we must negotiate and pay for in the free marketplace. Appended to this testimony are sample exclusivity provisions from Independent station program license agreements. If H.R. 2848 is enacted, these program contracts will be rendered meaningless. Satellite exhibitors will be free to commercially exploit in our markets the very same programs for which we have purchased exclusive licenses. In our judgment this represents inappropriate copyright policy.

H.R. 2848 also represents a sharp departure from historical communications policy. In crafting the Communications Act of 1934, as amended, Congress could have prescribed a broadcast system comprised of a few national superstations. Instead, Congress opted for a system of local broadcast outlets -- each selecting and purchasing programs for its individual market. By establishing a copyright preference for nationwide satellite carriers, H.R. 2848 would undermine the foundation of this system of free local broadcasting.

In one sense, the mere pendency of H.R. 2848 has helped to expose the legal charade that has been perpetrated by the so-called "satellite carriers". One glance at the trade ads placed by these entities demonstrates that they are selling programming -- not transmission services. They are not common carriers and should never have been permitted to engage in program distribution and exhibition under the Act's exemption for true passive carriers. The fact that these so-called "satellite carriers" have now sought a compulsory license for their performances of copyrighted works strips away their false veneer of mere common carriage. Exposed as satellite broadcasters, these entities should be obliged to play by the same copyright rules as terrestrial broadcasters and should be subject to the retransmission consent requirements of Section 325 of the Commumnications Act.

The Motion Picture Association of America has offered limited and qualified support for H.R. 2848 based on a communications policy objective. MPAA argues that "satellite carriers" represent a fragile infant industry that can be nurtured into a competitive alternative to cable television systems. However, the two largest "satellite carriers" are not infants. They are enterprises that have been in business longer and have significantly greater cash flow than a substantial number of INTV's Independent station members. Moreover, one of these "carriers" has been acquired by the nation's largest cable company; thereby casting doubt on the likelihood of achieving MPAA's communications policy objective.

If MPAA really believes that struggling infant competitive forces should be nurtured through compulsory licensing, then it should support a compulsory license for Independent television stations. At the very least, MPAA should not be supporting legislation that undermines the exclusive program rights for which our stations have paid Billions of Dollars -- to MPAA's members.

INTV's opposition to compulsory licensing is not motivated by a desire to thwart competition. Independent television operators understand the fact that they must accept increasing competition for the attention of television viewers from cable, from satellite broadcasters, from VCR's and from other new technologies. What is patently unfair, and what we should not be expected to accept and endure, is competition utilizing the very same programming for which our stations have purchased exclusive exhibition rights in their communities.

We are not asking for protection or subsidies. Nor do we seek a guarantee that our stations will be successful in their efforts to negotiate exclusive exhibition agreements. That is a challenge that must be resolved by the marketplace. However, if and when broadcasters do agree to pay the market clearing price for exclusive rights, then those rights should be honored by our copyright laws.

II. Imminent Technological Advances Make This A Particularly Inappropriate Time To Be Considering A Compulsory License For The Satellite Industry.

Congress does not amend our nation's copyright laws frequently or with great ease. Accordingly, it would be a grave mistake to consider H.R. 2848 solely in the context of current technological and market conditions. Rather, the prospect of a compulsory license for the satellite industry should be considered in the context of likely technological developments. I have brought with me today, a flat panel satellite antenna which was purchased off-the-shelf in the Japanese equivalent of a Radio Shack store just a few months ago. It cost only one thousand devalued dollars. This small antenna can be mounted indoors and receives an outstanding quality picture from high powered Ku band satellites already in operation in Japan.

High power Ku band satellites are not yet serving our country. However, the words "Flat Antenna" and "Broadcasting Satellite" printed in American English on the face of this antenna provide some clue as to the market which the Japanese have targetted for this technological development. High definition television, broadcast by satellite, can be expected to provide many consumers, including those in urban areas, with an incentive to purchase these small antennas and other satellite receiving equipment. As with other recent technological developments, mass marketing will dramatically lower the already surprisingly low price of these antennas.

In considering H.R. 2848, it is imperative that the Subcommittee not proceed from a mental image of a rancher in Wyoming with a 12 meter dish. Technological developments in the satellite industry are moving very rapidly. The clear trend is toward smaller and less expensive receiving equipment which is likely to increase dramatically the market penetration of satellite transmissions. Compulsory license preferences which might look like a good idea today, could appear very differently after a few years of rapid technological development. Moreover, sunset provisions which appear politically viable today, may become unmanageable political liabilities in the face of an expanded public constituency.

III. H.R. 2848 Should Be Amended To Apply Only To So-Called "White Areas" And/Or To Provide For The Recognition Of Exclusive Program License Agreements Negotiated In The Free Market.

A major objective of this legislation is to provide the benefits of free over-the-air broadcasting to those who live beyond the reach of terrestrial broadcast signals. However, as presently drafted, the bill provides a statutory license for the performance of copyrighted works to both rural residents living outside the service area of broadcast stations and to urban residents living well within the service area of local terrestrial broadcasters. This approach seems overly broad and unnecessarily destructive of the program license agreements negotiated in the free market by local broadcasters.

In INTV's judgment, the goal of bringing television service to rural residents in "white areas" can be accomplished without compulsory licensing. However, accepting *arguendo* the notion that compulsory licensing is necessary to provide service to rural residents, there is no apparent need or justification for extending the scope of that compulsory license to include urban residents who are already adequately served by local terrestrial broadcasters.

Any statutory license represents an exception to normal copyright market forces. In the event of a conflict between the government conferred compulsory license and negotiated license agreements, the compulsory license should yield to the negotiated license. Stated another way, compulsory licenses should not be permitted to supersede and override copyright license agreements entered into by parties operating within the free market. This basic precept was followed when the Congress adopted the cable compulsory license in 1976. That license was expressly limited to television signals permissable for cable carriage under the rules and regulations of the Federal Communications Commission. The report language on that Bill specifically referred to the Network Non-duplication and Syndicated Exclusivity Rules of the FCC as regulations which would ameliorate the market disrupting potential of a compulsory license.

As presently drafted H.R. 2848 employs more of a blunderbuss approach. Absolutely no provision is made for those instances where the government conferred license will come into conflict with individually negotiated exclusive license agreements. Unless amended to include syndicated exclusivity and network non-duplication provisions, this new government conferred program license will supersede and abrogate license agreements paid for by local stations at marketplace rates. Plainly, this is a grossly unfair result, which could not be intended by the sponsors of this bill.

Any amendments to refine the scope of H.R. 2848 should afford equal recognition to the network and syndicated program license agreements of affiliated and Independent stations. Significantly, MPAA has formally expressed its support for the principle that H.R. 2848 must apply "even handedly to network affiliates, commercial independents and public television stations." (MPAA testimony at p. 13.) There is no valid copyright purpose for distinguishing between a network program and a syndicated program. Invidious distinctions between Independent and network affiliated stations would be completely inequitable and would raise fundamental issues of communications policy. While the precise program schedules of individual Independent stations vary, the same leading syndicated programs are sold to local stations in virtually every television market. For example, according to an A.C. Nielsen Co. analysis, the 16 most popular syndicated programs during the week ending January 3, 1988 enjoyed an audience "reach" into between 89 and 98% of the nation's television homes.

H.R. 2848 should be refined to apply only to "white areas" and/or to provide some mechanism for recognizing and honoring program licenses negotiated in the free market. However, these amendments must accord equal treatment to Independent and network affiliated stations.

IV. The Loss Of The FCC's Cable Television Must-Carry Rules Cries Out For Compulsory License Reform.

Numerous proponents of H.R. 2848 have sought to draw a parallel between this legislation and the cable compulsory copyright license adopted in 1976. In fact some proponents described H.R. 2848 as necessary to create a "level playing field" between cable and the satellite dish industry. In light of these arguments it is critical to observe that the cable compulsory license was adopted in the context of a "Consensus Agreement", which included numerous regulatory provisions designed to ameliorate the impact of, and prevent abuse of, the compulsory license. Principal among those regulatory provisions, were the FCC's must-carry rules and syndicated exclusivity rules. At the moment, broadcasters face an intolerable situation in which the must-carry rule has been voided and syndicated exclusivity rules have been repealed. Yet the cable compulsory license lives on. Contrary to the clear intentions of the Congress, the cable compulsory license is now available for unfettered use as a weapon to discriminate among local broadcast stations, to abrogate negotiated program license agreements and to engage in legalized extortion. Already, cable systems have begun to drop local stations and to play roulette with their channel positions. By contrast, no cable system can ever be denied the use of any broadcast signal that the operator needs to sell his service.

The crux of this dilemma is that cable's compulsory license is imbedded in the Copyright Act while the companion regulatory provisions were left to the vagaries of an administrative agency. The obvious answer is for the Congress to revisit the cable compulsory license. Cable has become a multi-Billion dollar monolith no longer in need of federal largess. According to expert analysts the asset value of the cable industry now exceeds that of the broadcasting industry. (Broadcasting, August 31, 1987.) And yet, the cable industry continues to enjoy the privilege of building its business on the base of the program service paid for by local broadcast stations without any obligation to deal fairly with those stations.

At a minimum, the continued availability of a compulsory license to retransmit local broadcast stations should be conditioned upon the cable operator's willingness to comply with a reasonable must-carry obligation. In our judgment, equitable and appropriate amendments to the cable compulsory license should have a higher priority on the Subcommittee's agenda than extensions of compulsory licensing to additional media categories.

V. Conclusion

Mr. Chairman, we have stated our objections to H.R. 2848 forthrightly, but without any intention to offend. In the last Congress, INTV found itself in a position of flat opposition to a similar piece of legislation. We would much prefer to work with you, and the other members of the Subcommittee, in an effort to fashion amendments that would make it possible for us to be supportive of your efforts. We can only hope that we will have that opportunity. Thank you.

Salesman D. Campbell (101)

COLUMBIA PICTURES TELEVISION
A DIVISION OF COLUMBIA PICTURES INDUSTRIES, INC.

Dated as of March 6, 1986

The following SCHEDULE A and all of the written and printed parts thereof are a part of this License Agreement.

SCHEDULE A

SEP 29 1986

Licensee Pappas Telecasting Incorporated Station KMPH ANN STEWART

5111 East McKinley Avenue

Fresno, CA 93727

License Fee $ 75,000.00 payable as follows: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX in 36 consecutive monthly installments

commencing September 1, 1986 or on the first day of the month after the start of the term, whichever first occurs, as

follows: A first installment at $ _ _ followed by thirty-five (35) installments

such picture or pictures, and that the licensing hereunder of more than one picture is for the convenience of both Licensor and Licensee

Ship At: Program Director Bill At: Licensee

Additional Provisions

"SEE ADDEN[illegible] HERETO AND MA[illegible] HEREOF."

Executed by Licensee on this ____________ day of ______________________ 19_____. Upon execution in writing by Distributor at its Home Office in Burbank, CA, shall constitute a license agreement for the telecast of the pictures herein in accordance with the terms and conditions hereof.

Dated the day of , 19

Accepted at BURBANK, CA. 91505
COLUMBIA PICTURES TELEVISION,
A Division of Columbia Pictures Industries, Inc.

By ____________________

End of Contract

PAPPAS TELECASTING INCORPORATED
Licensee

By ____________________
Henry J. Pappas
President

(b) Licensor shall reduce the license fee payable by Licensee herein by a proportionate amount representing the value of the applicable license fee of the Program(s) so withdrawn.

4. Any reduction in the license fee shall be by credit to Licensee's account unless the entire license fee has otherwise been paid in full by Licensee, in which event, Licensor shall refund directly to Licensee any sum due to Licensee under the terms of this paragraph. In the event the individual license fee is not specified in the attached Agreement, the amount refunded to Licensee under the terms of this paragraph as a result of withdrawal of the Program(s) shall be the average license fee if the Program(s) have not been broadcast or a proportionate part of the average license fee if the Program(s) have been broadcast.

5. If a print or tape of a withdrawn Program(s) has been shipped to Licensee, Licensee will promptly return it to Licensor at Licensor's expense.

M. NON-PERFORMANCE

If Licensor fails to deliver a print or tape for any broadcast in accordance with Licensor's obligations hereunder because of "force majeure" (e.g., act of God; accident other than that occurring as a result of Licensor's negligence, fire, lockout, strike or labor dispute, riot or civil commotion; act of public enemy, enactment, rule, order or act of government or governmental authority (whether Federal, state or local), or if Licensee is unable to broadcast any film on the day and hour specified herein (if any) because of "force majeure," failure of technical facilities or for other cause of similar nature beyond Licensee's control, or because of the recapture of the broadcast time period for the purpose of broadcasting an event which in the Licensee's sole and nonreviewable discretion is of overriding public importance, such condition shall not be deemed a breach of the Agreement, and the term of the Agreement shall be automatically extended for a period co-extensive with the delay caused by such condition; provided, however, that in no event shall any Program(s) be broadcast more than the number of permitted broadcasts set forth in Schedule 'A,' including all broadcasts during such extended term.

N. EXCLUSIVITY LICENSE - PROGRAMS COVERED

1. The Program or Programs listed on Schedule 'A' attached hereto are the Programs covered by the Agreement and this Addendum.

2. The duration of this exclusivity license to exhibit the television Program or Programs covered by the Agreement and this Addendum shall be that set forth in Schedule 'A,' attached hereto and by this reference incorporated herein.

3. In consideration for Licensee's entering into the Agreement which this Addendum supplements, Licensor hereby agrees that for the duration of the Agreement and this Addendum, as defined in the above paragraph hereof, Licensor shall not license or authorize

the programs covered by the Agreement and by this Addendum to be exhibited, transmitted, disseminated, broadcast, delivered, or carried (whether by means of a television broadcast signal transmission path, or by means of a microwave transmission path, or by means of cable origination and transmission, i.e., "cablecasting," on a Class II or Class III cable television channel as defined in Section 76.5(aa) and (bb) of the Rules and Regulations of the Federal Communications Commission (hereinafter referred to as the "FCC"), 47 C.F.R. Sections 76.5(aa) and (bb), or otherwise by:

(a) Any other conventional television broadcast station, television broadcast translator station, low-power television broadcast station, or multipoint distribution service station authorized by the FCC to serve as its community of license any community whose geographical reference point, as defined in Sections 73.658(m) and 76.53 of the FCC's Rules and Regulations, 47 C.F.R. Sections 73.658(m) and 76.53, is 35 miles or less from the geographical reference point for Visalia, California as defined in Sections 73.658(m) and 76.53 of the FCC's Rules and Regulations, 47 C.F.R. Sections 73.658(m) and 76.53, or by any other conventional television broadcast station, television broadcast translator station, low-power television broadcast station, multipoint distribution service station or their functional equivalents, however denominated, authorized by the FCC to serve as its community of license Fresno, Hanford, Clovis, California or any other community which may be added to the Visalia, Fresno, Hanford, Clovis, California major television market, as defined in Sections 73.658(m) and 76.51(a) of the FCC's Rules and Regulations, 47 C.F.R. Sections 73.658(m) and 76.51(a); or

(b) Any cable television system or satellite master antenna television system providing "cablecasting" or other program origination service by means of a Class II or Class III cable television channel as defined in Sections 76.5(aa) and (bb) of the FCC's Rules and Regulations, 47 C.F.R. Sections 76.5(aa) and (bb), to any subscriber terminal which is located within 35 miles of the television broadcast station or any television broadcast station authorized by the FCC to serve as its community of license any community whose geographical reference point, as defined in Sections 73.658(m) and 76.53 of the FCC's Rules and Regulations, 47 C.F.R. Sections 73.658(m) and 76.53, is within 35 miles of the geographical reference point for Visalia, California, as defined in Sections 73.658(m) and 76.53 of the FCC's Rules and Regulations, 47 C.F.R. Sections 73.658(m) and 76.53, or which subscriber terminal is located within 35 miles of the television broadcast station or any television broadcast station authorized by the FCC to serve as its community of license Fresno, Hanford, Clovis, California or any other community which may be added to the Visalia, Fresno, Hanford, Clovis, California major television market, as defined in Section 76.51(a) of the FCC's Rules and Regulations, 47 C.F.R. Section 76.51(a).

(c) Any direct-to-home broadcast satellite company providing service to any household within the Visalia, Fresno, Hanford, Clovis, California major television market.

(d) No transmission of the programs made pursuant to the provisions of 17 U.S.C. Section 111 shall be deemed to be an infringement of the exclusivity granted to Licensee hereunder.

4. In the event that the terms of the Agreement and this Addendum shall be violated by a third party, Licensee shall promptly so notify Licensor and Licensee may, at its sole expense, institute such actions and proceedings before appropriate courts and/or administrative agencies, Federal, state and/or local, as Licensee shall deem proper in order to enforce the terms of the Agreement and this Addendum, and to recover damages for such violation. Licensor may join in such actions and proceedings, at its own cost.

5. Notwithstanding anything contained herein, Licensor shall have the right to license the Program or Programs anywhere for: (i) non-theatrical exploitation including closed circuit television and direct projection of the Programs in planes, trains, buses, ships, oil rigs, prisons, convents, orphanages and other shut-in institutions and for study purposes in schools, colleges, and other educational, military or cultural institutions; and (ii) for television exhibition in hotels and hospitals on a pay-per-view basis; and (iii) for exploitation on video cassette and disc devices.

O. GENERAL

Notwithstanding anything to the contrary contained in the Agreement, Licensee shall have the right to have each of the telecasts transmitted simultaneously with the telecast exhibited by Licensee's station, and at no other time whatsoever, over the facilities of any translator stations now existing or to be constructed by Licensee or by any other party, which translator stations engage in the rebroadcast of the signal of Licensee's station, to serve any portion of the television market within which Licensee's station now operates. Each such telecast shall be transmitted in its entirety without deletion of commercials or program content from the station hereinabove specified.

The attached Agreement and all matters or issues collateral thereto shall be governed by the laws of the State of California.

A waiver by either party of any of the terms or conditions of the attached Agreement (and this Addendum) in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations and agreements contained in the Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either party.

Salesman M. Strasser (605) **COLUMBIA PICTURES TELEVISION** Dated as of July 29, 1987

A Division of CPT Holdings, Inc.

The following SCHEDULE A and all of the written and printed parts thereof are a part of this License Agreement.

SCHEDULE A

Licensee West Virginia Telecasting Station WVAH
23 Broadcast Plaza
Hurricane, WV. 25526

License Fee $ Barter ~~payable as follows: due and payable on execution of this~~ agreement, but in any event no later than ___ the balance in ___ consecutive monthly installments commencing ___ or on the first day of the month after the start of the term, whichever first occurs as follows: ___

Term of license commences October 19, 19 87 ~~[illegible]~~ and terminates See Schedule B, XXXXXX thereafter

Product and Code No. "6 Movies of the Week" (See Riders A, E, M and VT and Schedule B annexed hereto and made part hereof)

Number of Pictures 6 Number of Telecasts 36* Runs per title 6

Licensee acknowledges that the foregoing are the number of pictures Licensee has determined to license hereunder from Licensor; that the licensing of each such picture has been separately negotiated and severally agreed upon; that the prices set forth herein represent fair value for said pictures; that Licensor did not directly or indirectly condition the granting of the license of any one or more of such pictures upon Licensee agreeing to license any other such picture or pictures; and that the licensing hereunder of more than one picture is for the convenience of both Licensor and Licensee.

Ship As: Program Director Bill As: Licensee

Additional Provisions
All references to COLUMBIA PICTURES TELEVISION, a Division of CPT Holdings, Inc in this Television License Agreement are hereby replaced by reference to COCA-COLA TELECOMMUNICATIONS, INC.

* Maximum Amount Allowed

Executed by Licensee on this ___ day of ___ 19___. Upon execution in writing by Distributor at its Home Office in Burbank, CA. shall constitute a license agreement for the balance of the pictures herein in accordance with the terms and conditions hereof.

• PLUS ATTACHED AMENDMENTS 1-4

West Virginia Telecasting, Inc.
Licensee

By Albert [illegible]
President

Dated the ___ day of ___ 19

Accepted at BURBANK, CA. 91505
COLUMBIA PICTURES TELEVISION,
A Division of CPT Holdings, Inc.

By ___

End of Contract

License Agreement No. 11798

RIDER M

EXCLUSIVITY CONTRACT

This exclusivity contract supplements and is made a part of a certain License Agreement dated JULY 29, 1987 (the "Agreement") between Columbia Pictures Television, a Division of CPT Holdings, Inc. (the "Distributor") and WEST VIRGINIA TELECASTING (the "Licensee") for the television exhibition of certain motion picture films.

1. The film or films listed on Schedule B attached hereto (the "Pictures") are the Pictures covered by the Agreement and by this exclusivity contract.

2. The term of this exclusivity contract (the "Term"), except as otherwise expressly provided in Schedule B, shall commence on OCTOBER 19, 1987 and shall end on SEE SCHEDULE B, or on the day following the date of the last of 36 telecasts of the Pictures which Licensee in entitled to make pursuant to the Agreement, whichever date is earlier.

3. Distributor shall not license for exhibition for free home television reception, during the term, the English language version of the Pictures to the entities listed below:

(a) another television station which is licensed by the Federal Communications Commission (FCC) to a community located thirty-five (35) miles or less from the community which [illegible] (Clarksburg/Weston) the Licensee's station is licensed to serve (distances to be calculated in accordance with Section 73.658 (m) of the FCC's Rules and Regulations); or

(b) a cable television system whose signal originates within a thirty-five (35) mile radius of the Licensee's reference point or the geographic coordinates of the main post office, as specified in Section 76.53 of the FCC Rules and Regulations.

COLUMBIA PICTURES TELEVISION,
a Division of CPT Holdings, Inc.

By_______________________
Distributor

WEST VIRGINIA TELECASTING, INC.

By_______________________
Licensee
President

Mr. **Kastenmeier**. Thank you, Mr. Padden, for your statement. That concludes the statements of the witnesses of this panel.

I would only say in reference to Mr. Padden's statement, this would not be the first time that Congress considered doing something like this. I actually think that the Cable Deregulation Act preceded this in terms of authorizing the receipt by earth stations of signals at the same time it authorized encryption in the marketing of those signals, but that seems to me to be the early progenitor of having to deal with this question in terms of what earth stations may or may not receive or how they may receive signals.

I am interested in just a couple of things, and I will yield to my colleagues shortly. You all seem to conclude pretty much that 99 percent of America is already receiving signals, presumably network signals, and we are only talking potentially about 1 percent here. Is that also your understanding, Mr. McCauley?

Mr. **McCauley**. Yes.

Mr. **Kastenmeier**. Had you hoped to market your, quote, package to a larger group than the potential 1 percent "white area"? I am not talking about networks, I am talking about the rest of your programming.

Mr. **McCauley**. We do have a provision. We have our six channels which we uplink from Denver—the three networks, PBS, and two independents there—and we have tier bit access which allows us to turn the networks on and off independently, so that if someone did not receive, for example, an NBC station where they lived but received the other two, we could only sell them the ones that they did not receive there. However, our other three stations are intended to be sold wherever anyone desires them.

Mr. **Kastenmeier**. Maybe you can help us with this. Not all of us are on the Commerce Committee; several of us are. There was mentioned the grade B contour area. Are we talking about that which is beyond grade B contour area? Is that the common terminology? "White area" is that what is not within grade B contour?

Mr. **Rogers**. Mr. Chairman, to some extent as a practical matter that may be what we are talking about. The NBC arrangement with Netlink is intended to be more flexible than that in that if there are dish owners who live inside a grade B contour but are unable to get off-air reception or reception through a cable system of NBC programming, that they too would be eligible to receive the Netlink service. We have tried to avoid having a strict engineering definition of what a "white area" might be in order to assure that those dish owners who may not fit clearly inside that definition still have access to the service.

Mr. **Kastenmeier**. Yes, Dr. Sherman.

Dr. **Sherman**. Mr. Chairman, prior to going to Peoria, I spent five years managing a television station in West Virginia, and it is well possible in an area like that, 20 miles from the station, you could have someone who lives in a "holler" and does not have cable coming down that way, is really isolated, and that, under the agreement that ABC and the affiliates are trying to develop with Netlink, would be defined then as a "white area".

So that makes it one of the difficulties if you try to define this only, say, as a grade B. There are those exceptions, and that is one of the things that we are trying to make sure is served through this bill and through our negotiations.

Mr. Padden. Mr. Chairman, in connection with the "white area," I just wanted to say to all the members of the subcommittee that our association would be more than happy to work with anyone on the subcommittee in coming up with a very flexible and reasonable definition of "white areas." It is not our intention to be difficult about where the line is drawn. We think the concept of the bill applying only outside of our local service area is more important than where the line actually gets drawn.

Mr. Kastenmeier. Of course, my questions are designed to try to determine whatever understanding may exist with respect to "white areas" or grade B contours or a definition for our purposes here.

I am also interested in the inclusion of cable. You have included those served by cable, and I guess the question is why—not that cable wouldn't want to be also included—but why you as broadcasters would necessarily want to ensure that being served by cable was also a substitute, whether or not within your own grade B or "white area."

Mr. Rogers. NBC's perspective on that issue, Mr. Chairman, is that it is not cable, per se, as a distribution system or as a technology that we are interested in seeing have any particular status under this arrangement, but the fact of the matter is, cable systems do provide viewers with access to local affiliates, and therefore the local programming affiliates provide, and contribute to the economic base of the local affiliate in terms of it being able to continue to provide that local programming. The concern was to the extent that someone could take down a nationally delivered network service via a Netlink type of arrangement and avoid having to take that service by means of the local affiliate, that we would be undermining the economic base of local programming, and that is really the only motivating factor there.

Mr. Kastenmeier. Thank you, Mr. Rogers.

Yes, Mr. Jones, did you want to comment on that?

Mr. Jones. Yes. I don't think the only driving force is the economics of it. This bill is designed to take care of those areas that aren't served and those people who don't get service.

One of the greatest concerns that the CBS affiliates had in coming to the table was that we preserve the system of broadcasting as we know it that is taking care of 98 percent of everyone's constituents here and free over-the-air television. If we begin to bring into cable companies signals from distant affiliates, we are eroding that system and we are eroding the localism that is serving those communities.

So it is not economically based, it is system based. In my opinion, more than anything, we have got to preserve the system, and anything that we do with this bill has to look toward that in the future because this is the best system of any country.

Mr. Kastenmeier. Mr. Jones, you don't have any problem so long as another CBS—let's say, the Denver CBS affiliate—signal is not brought into your area; you don't care whether Mr. McCauley's Netlink sells programming in your area that doesn't involve another CBS affiliate signal. Is that correct? So it is perfectly all right for him to do that.

Mr. **Jones**. That is correct. My concern is strictly with the networking system.

Mr. **Kastenmeier**. I would like to yield now to my colleagues.

The gentleman from California, Mr. Moorhead.

Mr. **Moorhead**. One question that I had dealt with was Mr. Malara's testimony that you would not be taking the network programming into areas other than the "white areas" but you would be taking independent stations into those areas.

In connection with the argument that was made by the independent stations that they would lose their syndicated exclusivity if that programming was being brought into areas that were otherwise being covered, how do you argue against his position, and could your system work all right if the same rules applied to independent stations as applied to the networks?

Mr. **McCauley**. We don't feel that the independent stations have the same situation as the networks do. For us to bring a network signal into an area served by a local affiliate, we would be duplicating 75 percent at least of the programming that that local affiliate already carries. To bring an independent station in, you are probably just duplicating 1 or 2 percent of the programming at the same time that it is on the local independent television station. So we don't feel that the criteria are at all the same and would urge the committee to have different standards for the networks there than for independent stations. We feel that to have the same criteria for independents would deprive the hundreds of thousands of viewers of independent television station viewing.

Mr. **Moorhead**. Would your system work if it was limited, however, to the "white areas"?

Mr. **McCauley**. We haven't examined that, so I can't give a full answer today, but we are certainly willing to examine that question and see if it would.

Mr. **Moorhead**. You know, if people are paying millions of dollars for programming and you have another program available, right there, with exactly the same subject matter, you are depriving those people of their investment.

Mr. **McCauley**. I agree, but, again, I think that experience has shown that the "superstations" are really not duplicating programming at the exact time and location that a local independent station is broadcasting. What people have found is that the consumer enjoys the additional choice that he has, different times to look, and that indeed very little programming is duplicated by "superstations".

Mr. **Moorhead**. Do you have any comment on that, Mr. Padden?

Mr. **Padden**. Yes, I sure do. Thanks very much.

First of all, let me say that the contention that a national "superstation" duplicates only 1 or 2 percent of the programming of a local independent station is, we believe, substantially inaccurate. We have gathered extensive documentation of the duplication of our local programming by national "superstations" in connection with the FCC's syndicated exclusivity proceeding, and I will, before the week is out, make all of that documentation available to the subcommittee so you will be able to see the facts yourself.

The fact is, Mr. Moorhead, that with respect certainly to all of the leading syndicated programs, those programs are sold to a local station in virtually every television market. I just noticed in one of the trades—it is in my written testimony—a couple of weeks ago they had a list of the top 16 top-rated syndicated programs and showed that the reach of the those programs ranged from 90 to 98 percent of all television homes.

So the only difference I can see between a network station and an independent station is, the independent stations sometimes arrange their programs in a different order, but essentially the same syndicated programming service is available in all the local markets. So the duplication of the programming is absolutely tremendous.

Mr. Jones. Congressman, if I might.

Mr. Moorhead. Yes.

Mr. Jones. One other point to that that concerns me a great deal—and I think this is a very good question—is that, again, our concern is to the future of our broadcasting system as we know it into localism. If we begin to compromise now, today, and don't just service the "white areas" that you are concerned about servicing, it gives me the impression that there will be future compromise and that the erosion begins from the beginning.

What I am really saying is, if this bill is truly intended to service the "white areas," I think we have to gear it exactly for that, and with our independent stations as well, to make that compromise today I think you have to recognize that you are not doing explicitly the "white area" idea. Plus, all those syndicated programs that come in on other independents also happen to be on network-affiliated stations. So there is duplication beyond the independents; it is also on the network stations.

Mr. Moorhead. From what you have testified, 30 percent of the programming of the independents of the network stations is syndicated or locally controlled. So it isn't all network programming.

Mr. Jones. Correct.

Mr. Moorhead. So you have got many of the same problems that the independent stations have.

Mr. Jones. Thirty percent; that's a fact.

Mr. Moorhead. How close are the other two networks to coming together either with you on a network or with some other system very similar to being able to cover these "white areas," which is what we all want to do?

Mr. McCauley. It is our understanding that both ABC and CBS are ready to enter into an agreement in the very near future, so, again, we are optimistic about concluding agreements with them.

Mr. Moorhead. Thank you, Mr. Chairman.

Mr. Kastenmeier. Mike.

Mr. Synar. Thank you very much, Bob.

Mr. Rogers, let me ask you a question I have been trying to get an answer to for some time but I haven't been able to get an answer. Why would a dish owner pay to receive an imported signal, with all the imported commercials and the network sports and everything, when he could get it for free?

Mr. Rogers. You are assuming that a dish owner lives in an area that could get that service over the air.

Mr. **Synar**. That is correct. Why would he pay for it?

Mr. **Rogers**. To some extent, a dish owner may want to have access to the non-network programming that is on the network station that is being imported. There may be regionalized sports programming of some kind that he might want access to. For the most part, when it comes to access to network programming alone and that programming which is universally available throughout the country, there wouldn't seem to be much of an incentive to pay for that which is otherwise available, but there are other elements of the programming provided by a distant network affiliate that may be of interest.

Mr. **Synar**. But is it fair to tell a dish owner that when you scramble the signal, that they are going to have to subscribe to cable to get that signal? Because the agreement that you have with Netlink, if I understand it correctly, prohibits the sale of the signal to dish owners within the cable franchise area.

Mr. **Rogers**. If they are within a cable franchise area and cable is passed by their home—that is, they have access to a cable system that is delivering a local network affiliate—they would not be able to have access to the service.

Our reasons for that are simply that we want to be able to preserve the ability of local stations, particularly those who serve rural areas, and these are smaller stations of which this kind of service through dish owners could very much disrupt their economic base, and I don't mean that in a protectionist type of way, as if there is a public policy reason to protect the economics of a local television station simply to protect its economics, but because that station is in an environment where it is providing local programming when other sources of video programming do not have that local component.

As a matter for the network or for big market stations, this is generally not an issue, but for smaller market stations this is an issue, and in order to put forward a marketplace approach that had the cooperation of all the NBC affiliates in a way that makes sure that this is done in a cooperative way with everybody participating and looking to get service to those dish owners who don't otherwise have access to it, this provision was very important.

Mr. **Synar**. Preston, let me ask you something. Am I wrong, or does it sound a little bit hypocritical that you come in here and you argue that no one should have a free ride on a compulsory license, that you are out there competing, and yet you are the same group that is in here demanding a free ride on "must carry"?

Mr. **Padden**. We are not demanding a free ride on "must carry" at all. If you repeal the local compulsory license, the cable guy has got to go out there in the marketplace and negotiate deals to carry any station that he wants to. I think the "must carry" case is less compelling. I think there are communications policy objectives there.

But I think the heart of the matter as we think it relates to the compulsory license is that when Congress adopted the local compulsory license for cable, it was a "ham and eggs" deal. The cable guy got the free right to carry any local station he wanted, but he also had the obligation to not discriminate among the local stations. If we are going to have no "must carry" and the cable guy can discriminate, carrying the ones he thinks he has to have to sell his service but not carrying the ones he thinks he can get away with not carrying, then the question, it seems to us, is whether Congress wants to, in effect, subsidize that discrimination by making the compulsory license available for him to effect that discrimination.

Mr. **Synar**. That is an interesting interpretation of history and also judgment. I don't think that is what the cable people had in mind when they were picking and choosing between various independents.

You mentioned in response to a question by Carlos that you are going to provide for the committee some information about duplicative services and programming. I hope the chairman will keep the record open because——

Mr. **Padden**. I will get it up to every member of the subcommittee before the end of the week.

Mr. **Synar**. All right.

I have been provided, just for my preparation for this hearing, the WGN ratings which show for all throughout the country that basically they don't have much of a market share, whether it be Chicago where it is three, and you go to the top six, and it goes to one, and then most of the market share and the ratings for WGN signal throughout all the markets—and I am not just talking about a limited number—are basically nothing. In fact, in the couple of areas of duplicative programming they are not reportable. That is, about half of these are not reportable.

Mr. **Padden**. I am familiar with the data you are talking about, and I have other data that I think you will find when you focus on specific programs, rather than washing out the effect over broad day parts, you will see a far more significant impact than in the data you are looking at.

But I would say that beyond the issue of——

Mr. **Synar**. Let me ask you a question.

Mr. **Padden**. OK. Go ahead.

Mr. **Synar**. Let me ask you a question. I mean I didn't even ask you a question, you are rattling here, and I want to ask a question. Given the fact that what this stuff shows—and you say that it is not going to show this, and it will be interesting to see what your numbers are—this is a pretty small number of viewers that are being affected. It doesn't really look like it is having a negative effect on the independent TV signals, as you argue.

I believe your argument would have more appeal if you could show that the impact is greater. I am hard pressed, looking at this data with respect to agree. You are coming in here and arguing that you are being crushed, and it doesn't appear like you are being crushed.

Mr. **Padden**. Well, like I said, I will be glad to provide you with other data that I think you will find shows a more significant impact, particularly when you focus on specific programs.

Mr. **Synar**. Specific programs?

Mr. **Padden**. Specific programs.

I think the impact is there, but beyond that, the question that I think we are talking about here is, should Congress, looking into the future, adopt another compulsory license to further the opportunity for someone else to exhibit the programs we have an exclusive license for? I think the copyright question has to be, do our contracts mean anything?

I mean in a month broadcasters are going to descend by the thousands on the NATPE programming convention in Houston, and they are going to go out there and mortgage their first-born children for very expensive programming, and they are going to sign contracts that say they are getting exclusive rights, and the question is, the copyright laws of this country, are they going to honor and respect those contracts?

I think I can refute the data you have that shows there is no impact, but even if I couldn't, I think that begs the question of whether there is some reason why the copyright laws of this country should not honor and respect those contracts, just like they do network contracts. I am trying hard not to feel too bad about all the attention lavished on the network-affiliate partnership and the sanctity of network program contracts. I don't see why, under the copyright laws, the fact that a contract is with a network organization rather than a program syndicator ought to make any difference at all about whether it is honored and respected by our laws.

Mr. **Synar**. Thank you, Mr. Chairman.

Mr. **Malara**. Mr. Chairman, Mr. Synar.

Mr. **Kastenmeier**. Mr. Malara.

Mr. **Malara**. One of the questions that you asked about—Why would a dish owner pay for service that he already has? We have found in a number of our conversations and conversations out of affiliate markets that—and I would hesitate to characterize this in a general statement or a summary statement, but almost all of the concern from the dish owners seems to be in the area of sports. As you well know, having access to 40 or 50 football games on a weekend for the sports junkie which provides hours and hours of entertainment seems to be one of the overriding reasons, the compelling reason, why the dish owners would wish for that access. It is certainly not, as you point out, in the area of seeing a CBS signal from a distant area. That is one of the great considerations, I think, we have found from dish owners who talk about having access to all the sports signals.

Mr. **Synar**. Why would they pay for it if they can get it for free? That was my question.

Mr. **Malara**. The question of getting it free from the current system—that is what we are trying, hopefully, to do here. I thought that your question was, why would we make this cable exclusive or get rid of the cable operation? One of the reasons, obviously, is to protect, as Phil has said in the past—the fact that on the cable system that is serving that market is the most local station. That is the first consideration.

Mr. **Rogers**. It is a different game that the imported signal may be carrying and the local signal may be carrying.

Mr. **Synar**. I understand. I have to watch Redskins games ad nauseum in this town.

Mr. **McCauley**. Mr. Chairman and Mr. Synar, if I might add one thing, we would agree that market place forces are primarily the determinant, and it is our experience that if people can get something for free they don't wish to pay for it. The exception is usually in the case of sports indeed, and we have turned down many, many people who would wish to see the Broncos but live within a "non-white area" and in our test marketing we have denied them service. So we would agree with that.

Additionally, Mr. Padden suggests that stations such as WTBS and WOR and WGN should be available within grade B areas to cable subscribers on cable systems but not to dish owners, and I think that it would be unfair to have it available on cable but not on dish.

Additionally, I would like to mention that the provision in the "white area" definition that they have to be served by either over-the-air or by cable was suggested by the networks because of the localism that they wish to favor here and which we, of course, support. So that was at their suggestion.

Mr. **Kastenmeier**. The gentleman from North Carolina, Mr. Coble.

Mr. **Coble**. Thank you, Mr. Chairman. I will be brief.

Mr. McCauley, the chairman touched on this earlier. You indicated, and I think you gave a number of viewers who are so remotely located they can receive this. Did you say one million?

Mr. **McCauley**. Yes. I think we all agree that approximately 1 percent or approximately 1 million is the figure.

Mr. **Coble**. OK. Thank you.

Mr. Malara, I will address this to you, but any of you can answer it. Speaking of these one million remotely located viewers who can't get the signal, at this juncture is there any sort of duty that the Congress should come into play on this, or should we let the marketplace determine how to get that signal, how to dispense that signal and penetrate into that home? I realize you all want to—and I don't say this critically—you want to get in 100 percent of the homes. I mean that is what you are in business for, and you are almost there.

That may sound like a slow curve I'm tossing up to you, but what is your response to that, Mr. Malara?

Mr. **Malara**. I always had trouble with slow curves, Mr. Congressman.

In our statement at the affiliate board meeting, one of the opening lines was that we recognized that the goal of the television system in the United States is universal service. It is also, as had been brought up earlier, localism. We share your every concern that everyone who wants to see television, free, over-the-air television, should see it. Networks and other people have come before this committee and other committees and said that we believe that Government intervention should be kept at a minimum. We prefer to be able to work these things out for ourselves. It is always in the best interests of people who are in our kind of business to do this for ourselves. We have come to you on a number of other regulations and asked you to allow the marketplace to work.

CBS and other networks, I am sure, have always said, "We would like to do this by ourselves." We believe, therefore, that we can't come to you in one committee meeting, as has already been suggested in another case, and ask for something and be inconsistent in another area. CBS has always been consistent; that is best left to private enterprise, localism, non-government intervention. We think we can find a way to do that, and with the help of Netlink and other suppliers of that kind of service, maybe we can. We are trying to work toward that while, at the same time, making sure that that station operator who is located in whatever area of North Carolina providing the local news and programming is respected as to his exclusivity with our network.

Mr. **Coble**. Thank you, Mr. Chairman.

Mr. **Kastenmeier**. The gentlewoman from Colorado.

Mr. **Coble**. Mr. Chairman, I think this gentleman wanted to be heard.

Dr. **Sherman**. Just from the point of view of one group of network affiliates, Congressman Coble. There is nothing that has occupied us more in the past six months in our meetings and discussions than trying to find a way in which we in the private sector could come to an agreement with Netlink in order to be able to provide that service to the "white areas". So we would appreciate the opportunity to be able to try to resolve these differences ourselves, and we are definitely working toward that goal, sir.

Mr. **Coble**. Thank you, Mr. Chairman.

Mr. **Kastenmeier**. The gentlewoman from Colorado.

Mrs. **Schroeder**. Thank you, Mr. Chairman. I want to thank the witnesses.

Actually, I don't have much to add to it, but the things that I have seen we really have not talked about. Let's go back to Mr. Synar's question about what kind of an economic threat is this really, I have seen studies showing that if people don't see what they want to see, and they have a satellite, and they have cable, and they have everything else, they also have a VCR. So they turn it all off and go get a movie. So that the economic arguments of five years ago or something have now shifted a lot because people have even one more option, and that is why these figures look like this. I don't know if that is really true, but when I talk to people in the industry, that is what they tell me.

Then we get down to the legalistic argument of, how exclusive is exclusive?

Mr. **Padden**. I understand your question. Our fear is largely predicated on where we think the satellite dish industry is likely to go. High definition television is likely to be delivered to homes by satellite broadcast before local broadcasters are able to get there. If we are showing the Cosby Show on an NTSC picture and somebody else has got the right to feed it down on a high definition picture, it is going to give people more of an incentive to abandon us and go the satellite.

We recognize that there is competition of all kinds. You are right: VCR's are eating into our audiences. I am not here asking you to ban VCR's. But the VCR people don't have a compulsory license to programs that have been licensed exclusively to us.

All we are saying to you is, if we choose that the Cosby Show is going to be our weapon in this new, highly competitive marketplace, and if we pay a market clearing price for the exclusive rights to that show, please don't give another medium with which we are competing a Government license for the same program. That is all we are asking.

Mrs. **Schroeder**. But they are also going to have to pay. I can't believe that the Cosby Show isn't going to make sure that they also are paying.

Mr. **Padden**. Under your bill, it is 12 cents per subscriber per month.

Mrs. **Schroeder**. That is a lot of money if you add it all up, though, isn't it?

Mr. **Padden**. Believe me, our guys would take that deal in a minute.

Mrs. **Schroeder**. That is interesting. I think that might be an interesting component of your economic argument that we should look at.

Mr. **Padden**. As I said, one station in the Los Angeles market is going to be paying a million dollars a month for one single half-hour show.

Mrs. **Schroeder**. But how many viewers will watch that? So if you divided the viewers into that——

Mr. **Padden**. We will be happy to do that math, and I think you will find that our guys are coming way out on the short end of that arrangement.

Mrs. **Schroeder**. Obviously, Los Angeles will pay a whole lot more than a smaller market.

Mr. **Padden**. But the 12 cent figure, of course, includes any viewers in Los Angeles that the licensee under this compulsory license wishes to serve.

Again, we are not antagonistic to the notion of bringing television service to rural dish owners, and if we could all agree that that is what we want the bill to do, I assure you, you will not find us being difficult about how you define that. Our only problem is giving somebody else a license to exhibit the programs we purchased exclusively in our own markets.

Mrs. **Schroeder**. Let me ask one other question. I guess it is because I live in another time zone. One of the things that we find happens is that when you do have these "superstations", whatever it is they are running, they run it in another time.

Mr. **Padden**. And I guess the judgment you have to make is whether the hour difference, in your judgment, justifies amending the copyright laws of this country to say that the program contracts of the local station don't mean anything. That is what it comes down to.

Mrs. **Schroeder**. Or whether the exclusivity rule means you control all the time for that program in that market.

Mr. **Padden**. You know, everybody else in this marketplace—the cable networks—are free to purchase exclusive program rights and tout those exclusive program rights as a reason why you ought to watch their service as opposed to some other service. We are only seeking the same right.

I would point out that the satellite carriers, if they had purchased rights in their programming before they scrambled it, they wouldn't have a problem today. I mean HBO has no problem scrambling its programming because HBO owns its programming. The only reason these people have a problem is, they went into business selling programs to people that they didn't have any rights in, and instead of going to the owners of the programming to get those rights they are now coming to you.

Mrs. SCHROEDER. Mr. McCauley.

Mr. MCCAULEY. Congresswoman, thank you.

I find it interesting that Mr. Padden, who spends so much of his time cable bashing, wishes to give cable subscribers rights that he doesn't wish to give to dish owners. I think that that is very unfortunate, because it would be unfair to deprive these people of the same programming.

I think Mr. Synar's information there demonstrates that indeed the imported signal doesn't receive the viewership that the local affiliate does. Most people prefer to watch their local stations. So I think that that is the argument.

Mr. JONES. Congresswoman, there is one technological aspect of this that is a bit of a concern to me that might shed some light on it. I think to draw an exact parallel between satellite and cable would be inappropriate. The problem with cable and what it represents as a deterrent to the broadcast system as we know it, which is giving 99 percent of the public a free signal, is much different than what cable has done or could do in that competitive environment.

So I think to make them on a par basis when you are comparing things would not be appropriate. I think you have to look at the fact that satellite is generally accepted throughout the country, and that could eventually erode the localism system, whereas cable can bring into each community a specific local system and stations.

Mrs. SCHROEDER. Well, satellites do erode it, but the other thing that is so interesting about it is the thing that makes it so appealing, the localism system of especially sports. I mean people move around, and they still want to follow the teams, and that seems to be one way they get it.

Mr. JONES. The local teams normally, without fail, quite frankly, are delivered to their local community. That is our charge, and if we are not servicing with the Denver Broncos in Denver we are in trouble.

Mrs. SCHROEDER. That is true in Denver, but people who happen to move from Denver and want to see it somewhere else then are attracted to the satellite.

Mr. JONES. That is a little difficult to deal with. Maybe they shouldn't have moved if they loved the team that much. We are there to service a local community, and that is what we try to do, serve that local community, and to take the presumption that we should serve someone else's community I don't think would be——

Mrs. SCHROEDER. No, no, no. I am saying you are serving the local community. Then someone pulling it out and feeding it off the satellite to other communities is part of what makes that service attractive, especially in re sports. I don't think you understand what I am saying.

Mr. JONES. But if you extended that out, Congresswoman—I understand what you are saying on the short haul, but if you extended that out to what it dilutes in the local system and then the local entity's ability to do business, it would go out of business because it would be watered down to the point that you really couldn't serve your community.

Mr. **Kastenmeier**. Has the gentlewoman concluded?

Mrs. **Schroeder**. I am not sure I understand all of that, but thank you.

Mr. **Kastenmeier**. The gentleman from Virginia.

Mr. **Slaughter**. No questions, Mr. Chairman.

Mr. **Kastenmeier**. The gentleman from California.

Mr. **Berman**. Thank you, Mr. Chairman.

Is there anything in the bill that conceptually is inconsistent in terms of the way it treats network affiliates and independent stations? I have heard a lot of talk about nondiscrimination and that area, but I don't quite understand what is being talked about.

Mr. **Padden**. Not currently, Mr. Berman, and I am somewhat at the same disadvantage, because I haven't seen any language that makes that kind of discrimination. But we understand that amendments will be offered that affect that kind of discrimination.

Mr. **Berman**. What does that mean? What would the amendment do?

Mr. **Padden**. The network organizations will seek to absent themselves from this bill. Now that is an objective. Don't get me wrong; I don't fault them for it. If I was a network, my first priority would be to try and get myself out of this bill, too. I would worry about local stations and independent stations as a second priority.

Mr. **Berman**. Let's see if that is something you need to worry about any longer.

Mr. **Rogers**. I think, Congressman, that our view is that if there is a marketplace mechanism to provide service to rural dish owners along the lines of the agreement we have entered into with Netlink, that there wouldn't be any basis for needing to extend the compulsory license for purposes of network signals, and therefore the bill as drafted is unnecessary.

Mr. **Berman**. Then you are opposed to this bill because of the compulsory license?

Mr. **Rogers**. That is right. We would take the view that a compulsory license is not necessary if a marketplace mechanism exists to accomplish the same goal of providing service to rural dish owners, which we think our Netlink agreement does. There may be certain aspects of effectuating a Netlink scheme which a marketplace approach can't entirely take care of. There may be certain elements of the programming clearance process in terms of getting all the rights lined up that may require some form of limited compulsory license, limited in terms of time and limited in terms of what it covers. But an approach which mandates a scheme through a compulsory license as opposed to the voluntary one that we have taken we wouldn't think is necessary.

Mr. **Berman**. So you are saying you are not necessarily opposed to the bill but you might want to exempt the networks from the fundamental coverage of the compulsory license.

Mr. **Rogers**. In its present form, we would not support the bill. We would recognize there may be certain limited aspects of a compulsory license that may be necessary here to effectuate our kind of scheme.

Mr. **Berman**. The second question, I guess, is in response to this gentleman from Netlink's comments about Mrs. Schroeder's question. What is the conceptual justification, other than it is an additional and much, much smaller annoyance to the independent television stations, to legislate syndicated exclusivity, if that is what you are asking us to do in this bill, when that doesn't apply to the much larger cable network?

Mr. **Padden**. Well, I am glad you asked that. I wanted the opportunity to make sure the record shows that I was accused this morning of unfairly favoring cable systems. [Laughter.]

We have been working since 1980 when the cable television syndicated exclusivity rules were repealed by the FCC to get that protection restored. For anyone who is not familiar with it, the FCC repealed the recognition and protection of independent stations' syndicated programming but retained the protection of network affiliate network programming.

Mr. **Berman**. Network affiliate network.

Mr. **Padden**. That is right. That is right.

We have been trying to get syndicated exclusivity protection back ever since. There is a proceeding going forward at the FCC right now in which the FCC has proposed to reinstate——

Mr. **Berman**. Let me just make sure I understand that. Under FCC rules right now, a cable operator cannot bring in the network signal on a station where there is a local affiliate.

Mr. **Padden**. That is right. To give you a precise example, the Cosby Show will be running first run on the network and off-network in reruns on independent stations at the same time. The cable operator will be able to duplicate the rerun episodes running on the independent station. He will not be free to duplicate the first run episode running on the network. Why anyone thinks that makes sense is beyond me.

My point simply is, we are trying to get syndicated exclusivity protection back at the FCC. We think we are close, and to us this bill represents a giant step in the wrong direction.

Mr. **Berman**. But everything you are saying, all your comments about——

Mr. **Padden**. Apply equally to cable. Absolutely, sir.

Mr. **Berman**. —cable really make no sense unless that also applies in the cable area.

Mr. **Padden**. They do apply, and I assure you our filings at the FCC are consistent with everything that we have said here today.

Mr. **Berman**. OK.

Mr. **Kastenmeier**. If I may just comment, I think the problem is, what the bill is premised on is establishing some parity between dish owners and cable subscribers, but what is affecting independent television is that the same old problems that they have had with cable are replicated here in terms of the earth station owner and there is no particular reason for independent television stations to embrace this bill because of that. It is a modest extension, modest indeed, of really what they regard as flawed—old battles that have been lost with the FCC and through other entities.

Mr. **Synar**. I'll vouch that Preston has been working against cable all these years and he didn't try to curry favor with them today. [Laughter.]

Mr. **Padden**. Thank you, Mr. Synar.

Mr. **Synar**. Thank you very much.

Mr. **Kastenmeier**. The gentleman from Ohio, Mr. DeWine.

Mr. **DeWine**. Thank you, Mr. Chairman.

Mr. McCauley, is the technology available to black out duplicative programming in a local area? For example, if the "superstation" is running M*A*S*H and you are going into a local area and some independent station has bought M*A*S*H there, is it technically possible for you to take that half-hour period out and just black it out?

Mr. **McCauley**. It is technically possible to take any period of time and black it out.

Mr. **DeWine**. For a specific area.

Mr. **McCauley**. No, not for a specific area. As a satellite footprint covers all of North America, so all of North America would be blacked out.

Mr. **DeWine**. So the only way you can do that is to go in on the receiving end somewhat.

Mr. **McCauley**. Correct—which is in the home, which is not possible.

Currently, per the terms of our NBC agreement, when someone calls in, we ask them if they can receive their local network affiliates off air or via cable; we do that screening process, and we follow up with a written communication that they have to attest to this end. For us to do the same on an independent basis would, we feel, be absolutely impossible. You would have to sit there and ask, "Do you get 'Leave It To Beaver' at 7 o'clock in the morning?" to see if there is syndicated exclusivity, and that would certainly not be possible.

Mr. **DeWine**. Thank you.

Mr. **Kastenmeier**. Just following up on that, if an earth station owner said, "Gee, you know, I've got a dish here, and currently I'm picking up network signals off the satellite; Actually, I'm in a grade B area, but I don't have a normal antenna, and I can't really get them adequately, but you are going to determine that I can't pick up NBC; then it forces me to go back and put up an antenna and try to get what has been an inadequate signal perhaps, as far as I'm concerned, from the local affiliate." What is your response to them in that situation?

Mr. **McCauley**. After spending many, many hours discussing how to define the "white area" definition, we came to the determination there is only one person that can truly judge whether they are in a "white area" or not, an that is the viewer themselves. They know whether they can get it off air and whether it is an acceptable quality picture, which is why we ask, "Can you receive your local network affiliate off air or via cable?" and at that point they are the judge of that. If cable is running by but they haven't chosen to hook it up, then they have the option to get their local affiliate, and we cannot serve them in that case. But we don't turn them down if they can't get it.

Mr. **Kastenmeier**. Then your answer to Mr. DeWine was that you do not presently have the capability technically of discriminating between or among programs but you do among channels. That is to say, you can distinguish among certain channels that you would authorize, as opposed to programs within a given——

Mr. **McCauley**. Correct. When we uplink KCNC, to use an example, it goes on to a transponder on a satellite, that is then beamed down and covers all of the United States at that point. For us to block out a half-hour program of that would be to block it out to the entire United States, not to just a local market.

Mr. **Kastenmeier**. The gentleman from Virginia, Mr. Boucher.

Mr. **Boucher**. Thank you very much, Mr. Chairman.

I noticed in the testimony that was presented by all three networks that there is a reference to the assertion that the networks are presently serving about 99 percent of the TV households in America. I wonder where that figure comes from. Could I get comments with respect to that from the network representatives here?

Mr. **Rogers**. From NBC's point of view, it is a very hard number to get totally accurate numbers on, but that is a combination of NBC's own in-house research in terms of compilation of station reach and cable system reach and I believe, to some extent, Nielsen data has contributed to the NBC research efforts in trying to arrive at that number. It is something along the lines of 1 percent.

Mr. **Boucher**. I thought perhaps you were relying on the FCC's statistics. Is that really not where it comes from?

Mr. **Rogers**. I have seen similar FCC statistics. I don't know what the FCC has done to develop. their own numbers there, but our research indicates that it is about a 1 percent figure.

Mr. **Boucher**. Let me just state to you a concern and I would be happy to get your response and perhaps the CBS representative's response as well.

It is my understanding that what is often used to arrive at a figure similar to this is the FCC's grade B contour map, which is essentially just a line, a circle, which is drawn around the television station based upon its power with a prediction thereby arrived at as to the number of households that are served by that station.

The problem is that that really is the basis of this estimate. It doesn't take into account physical obstructions to the transmission, such as mountain ranges. I live in an area that has a lot of mountains and I have about 10,000 constituents who have backyard satellite dishes. I know that in my congressional district, 99 percent of our people don't have access to all three networks.

I am just questioning where you get this figure from, and I wonder how accurate it is.

Mr. **Rogers**. I think your assessment is a fair one. I think if we were to come up with a number of how many households are truly outside of any service area, that might be a number smaller than 1 percent. When you combine that with those small pockets where they may be within a grade B contour, but, as you state, have obstructed access to viewing, that is when the number increases somewhat to the 1 million household range.

I agree with your analysis that it is not fair for purposes of coming up with that figure only to take into account those rural homes that are located at a distance beyond the reach of a signal.

Mr. **Boucher**. Even though they lie within the grade B contour of three local affiliates that offer network services.

Mr. **Rogers**. That is right.

Mr. **Boucher**. Let me ask you this. My whole point in being a cosponsor of this measure is just to make sure that fundamental fairness is provided to the owners of backyard dishes and that they will be in a position to get "superstation" signals as well as receive all three networks.

There are "white areas," we know that. I tend to think it is more than 1 percent of all television households. There may be some debate about that. I know in my area, it is clearly more than 1 percent.

What would the networks say if our legislation were amended in such a way that the limited compulsory licenses we are providing only applied with respect to network signals in those areas that we define as "white areas" by whatever definition we arrive at here? Wouldn't that satisfy your basic concern and couldn't you see your way clear to support that?

Mr. **Rogers**. I think that is essentially the approach that we have developed with NETLINK. We have a very flexible definition of unserved "white area." It is not one based on grade B contour; it is one that is intended to deal with just the types of issues you have raised.

I think our response would be that why would a compulsory license be necessary to effectuate that if, in fact, our agreement is intended to provide a voluntary marketplace solution to achieve the same end.

Mr. **Boucher**. The simple answer is that we have no assurance that your agreement is going to be permanent in nature, whereas we could have somewhat more assurance of a continued receptability of network signals were we to enact this legislation.

Mr. **Rogers**. I think what that involves is an assessment on your part that we don't have an incentive to achieve universal service and I think, in fact, we do. To the extent it is a "white area" approach, there is all the incentive in the world to expand our coverage to 100 percent, whether you think it is 97 percent or 99 percent now. We do have that incentive to achieve universal service. We would like to be able to do it. The complicating factor has always been, how do you do that in a way that doesn't undermine localism. The voluntary approach that we have come up with, and worked out with our affiliates, I think does provide a basis for them to cooperate and contribute to it, too, so there is nobody out there with a disincentive to see this NETLINK effort achieved.

Mr. **Boucher**. I hear what you are saying.

Yes, sir.

Mr. **Malara**. I think I just want to add the CBS support for two very, very specific positions. I mentioned earlier a consistency in at least our position, not being empowered, obviously, to speak for the other two networks.

It would serve the network no purpose—no good purpose at all—to be speaking on one hand in other corridors in this building and in other buildings on Capitol Hill to speak about the business of universal, free, over-the-air television and allowing these businesses to operate that way and come to you in another venue and say, "We really don't have that consistency and we really don't mean what we say."

To be here and not be clearly, deeply interested in whatever it is, 1 percent, 1½ percent or 2 percent—it has never been a matter of a number for us. We have recognized clearly there are people outside current service areas, current extension of cable systems, current translator service. There are, as Dr. Sherman already mentioned, thousands of translators around.

We have said, whether it is 400,000, a million, a million and a half or two million makes no difference. Those people deserve service. When we appear at a committee hearing in some other building and say, "We believe in universal television service-free over the air, that is what we are dedicated to," you have to take that statement as exactly what it says and exactly what we mean.

If it is 2 million people, we will find a way to serve those 2 million people. That is, in fact, what that translator task force tried to do at CBS with our affiliates in early 1986. What we found was that, indeed, there was this isolated home, even in the backyard or the shadow of the tower, that could not see that service and we have to find a way to do that.

Mr. **Rogers**. If I could just make one further point, Congressman, in stating our position, I don't want to suggest that there may not be a limited element of a compulsory license here when it comes to service to "white areas" or unserved areas that might be helpful, as I mentioned, in terms of program clearances of nonnetwork programming. It may be helpful in order to effectuate this scheme to have some type of very limited compulsory license so there may be something there that, if the marketplace solution can't totally do the trick, enables our agreement to be put into effect.

Mr. **Boucher**. I appreciate very much your comments. I see what may be the outlines of a possible compromise here that I think meets the legitimate concerns of your network affiliates, and yet, at the same time, assures the continued receptability of your signals within these "white areas."

I thank you very much for those responses.

Thank you, Mr. Chairman.

Mr. **Kastenmeier**. The Chair might just add that I don't think the network representatives or the affiliates this morning are fully prepared to discuss their plan, but I think they have one pretty much in mind and will submit something to us so we can examine it in some detail in terms of whether it meets the policy tests and so forth.

I just have one or two quick questions, based partly on what Mr. Malara and Mr. Rogers said, addressed to Mr. McCauley, the basis being that the networks are interested in the universal reception of their programming, rather than a return to them. I think NBC has said that whatever agreement they have with NETLINK, they are really not contemplating making very much money out of the relationship. They are more or less interested in extending the service to unserved areas. That seems to be a network end.

Therefore, I would ask you, as a representative of NETLINK, what—and obviously this is going to cost the person who ultimately subscribes to the service—do you contemplate charging them for each network signal that you are going to provide them, in general parameters?

Mr. **McCauley**. We have discussed with NBC, the concept of keeping the cost low. The concept we have talked about is to provide the network signals, whether it is one, two or three that they are eligible to receive based on our screening, for approximately $2 per month.

Mr. **Kastenmeier**. Do you expect any part of your programming to consist of that which is covered by compulsory license with respect to cable today?

Mr. **McCauley**. We currently sell these signals to cable systems in remote areas that need any of the six signals, whether it is network-affiliate, PBS or independent programming. We have subscribers in such places as Nome, Alaska, where they have not been able to receive network programming before and remote towns in Colorado that have never received it before. So, yes, we do provide service that way.

Mr. **Kastenmeier**. Is your contract with the networks exclusive? That is to say, would any other distributor have to come to you?

Mr. **McCauley**. Absolutely not. It is a nonexclusive agreement.

Mr. **Rogers**. That was a very important issue for us as well, Congressman.

Dr. **Sherman**. It is also a very important issue for the affiliates. We want those contracts to be nonexclusive.

Mr. **Kastenmeier**. Thank you. This has been very helpful this morning. There probably are a number of other questions we might ask you, but you have been very forthcoming and we appreciate the contributions that you, individually and collectively, have made. It is a very large panel indeed. I know I am going to want to talk to, among others, Mr. Padden, in the future as well because I know that the networks and affiliates have perhaps worked something out. I don't know that it includes independent television. We want to talk separately to you.

In any event, we thank you gentlemen for your testimony.

Our last panel—and I am sorry to reach them so late, but this is the way things often go. This panel consists of witnesses who represent large groups of earth station owners, especially those living in rural areas of this country.

Our first witness will be a long-time friend, Bob Bergland, who is Executive Vice President of the National Rural Electrical Cooperative Association. Bob served here in the House of Representatives with great distinction between 1970 and 1976. He was also Secretary of Agriculture during the Carter Administration.

The second witness on the panel will be Rick Brown, who represents many thousands of dish owners who belong to the Home Satellite Television Association.

The third witness is Mr. Bob Phillips, Chief Executive Officer of the National Rural Telecommunications Cooperative Association.

Gentlemen, I am going to call on Mr. Bergland first because I know he has a commitment and if there are any questions to ask of Mr. Bergland, we will put them to Mr. Bergland after he concludes and then he would be free to leave if he so chooses to meet his commitment.

I am delighted to greet you, Bob. You may proceed as you wish.

TESTIMONY OF BOB BERGLAND, EXECUTIVE VICE PRESIDENT, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION; BOB PHILLIPS, CHIEF EXECUTIVE OFFICER, NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION; AND RICHARD L. (RICK) BROWN, HOME SATELLITE TELEVISION ASSOCIATION

Mr. **Bergland**. Thank you very much, Mr. Chairman, and members of the subcommittee. In the interest of time, we would like to submit a statement for the record and shorten it to discuss a couple of important points.

Mr. **Kastenmeier**. Without objection, your statement and, indeed, all of the other statements that are prepared and submitted to the committee will be accepted and made a part of the record.

Mr. **Bergland**. Thank you, Mr. Chairman.

We are here today to support the principles embodied in the bill, H.R. 2848. We are an association of 930 distribution cooperatives located in 46 States serving about 11 million rural families.

Of that 11 million, about 7 million or so are beyond the reach of cable. These are families who will never have access to cable because of the lack of density. We average only five families per mile of line. Cable systems, on the other hand, require 20 to 25 or more families to make cable service affordable. So there is a large population in rural places that will never enjoy the benefits brought by cable. Unfortunately, their access to direct broadcasting is, in many instances, very poor, and in some cases, nonexistent.

To meet the needs of our rural constituency we organized a cooperative. We in the electric program joined with the rural telephone network and a finance subsidiary to form the National Rural Telecommunications Cooperative about two years ago. It is now under way. We have more than 500 of our affiliated members who have joined this association. They are now getting trained, getting equipped and are in the business of offering packaged signals to their viewers.

NRTC's program, Rural TV, is becoming well known and while we are new in the business, we are now enlisting about 100 families a day.

In addition to discussing the entertainment, news and information brought by the television industry, Mr. Chairman and members of the subcommittee, I want to bring your attention to a very distressing development in rural places. We are losing population fast in 20 States—Texas to the Canadian line and Mississippi River to the Rocky Mountains. In fact, about half the rural counties are losing population and have been in the midst of a population decline now for six or seven years.

NRECA has have organized a campaign to deal with economic development in rural places. We simply need more jobs in rural places to diversify those economies. In this high-technology age, we realize that essential to any kind of permanent community and economic development is the need for access to information through the miracles of electronics.

So it is essential to any development effort that we have access to the kinds of technologies which the television industry can bring, not only for news and information, but for training and for other market information.

We are encountering some real problems and today, Mr. Chairman, we have the Chief Executive Officer of our combined association, Mr. Bob Phillips, who is an attorney out of Kansas. I would like to yield to him to deal with some of the more technical matters embodied in the bill and a couple of recommended changes.

Mr. Phillips.

[The statement of Mr. Bergland follows:]

National Rural Electric Cooperative Association

1800 Massachusetts Avenue, N.W.
Washington, D.C. 20036
Telephone: 202/857-9500

Statement
of
BOB BERGLAND
Executive Vice President
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

before the

Subcommittee on Courts, Civil Liberties and
the Administration of Justice
of the
Judiciary Committee
U.S. House of Representatives

January 27, 1988

regarding

H.R. 2848: THE SATELLITE HOME VIEWER COPYRIGHT ACT

Good morning, Mr. Chairman and members of the Subcommittee. My name is Bob Bergland. I am the Executive Vice President of the National Rural Electric Cooperative Association (NRECA). NRECA is the national organization representing more than 1,000 not-for-profit, consumer-owned systems providing central station electric service to more than 25 million Americans. We serve the sparsely-settled areas in 2600 of the Nation's 3100 counties in 46 states. We cover 75% of America's land mass, but only 12% of the population.

I appear before you today to speak in support of H.R. 2848, the Satellite Home Viewer Copyright Act. The membership of NRECA feels passage of this legislation is essential to eliminate the uncertainty presently surrounding the delivery of scrambled broadcast signal to the TVRO market.

The delivery of quality television signal to the Americans living in rural parts of the United States is of great importance to NRECA. To this end, NRECA joined with two related organizations, the National Rural Utilities Cooperative Finance Corporation (CFC) and the National Telephone Cooperative Association (NTCA), to form the National Rural Telecommunications Cooperative (NRTC). Chief among NRTC's missions was to negotiate the right to distribute a package of television signals to be received by rural residents owning satellite television dishes. To date, NRTC has nearly 500 member utility systems in 45 states.

In June, 1987, NRTC announced a package of signal, "Rural TV", which contains 18 channels of news, movie, superstations and sports programming. Rural TV, which was formally launched on October 1, 1987, currently serves more than 6,000 homes. NRTC members report that they are adding 100 new homes a day! Rural TV and the NRTC are up and running. We at NRECA are proud of their accomplishments and are looking forward to their many successes.

Mr. Chairman, why do we feel that we ... rural utility systems ... need to be involved in the business of satellite television signal delivery? This is a fair question. We feel that our activities in this area are similar in nature to the reasons we became involved in the delivery of electricity. In the mid-1930's, rural electric cooperatives were established so that rural Americans could join together and create for themselves, on a cooperative, not-for-profit basis, a delivery system to bring the benefits of new technology to the unserved areas. These rural utilities brought electricity to farmers and rural dwellers unable to obtain basic services at any price, simply because of their remote location. The cooperative, self-help spirit and the service orientation of these rural cooperative utilities have serviced rural America well for over fifty years.

Projections show that more than 20 million U.S. homes will never receive the benefits of cable television service because population density will not economically justify the extension of cable service. We know that approximately seventy-five percent (75%) of our 11 million cooperative-served homes currently have no access to cable service and never will have. It is these unserved rural Americans who live without the benefit of modern television programming that NRTC seeks to serve.

Today, there is a new technology which promises rural America more of the benefits of modern living. Satellite-based telecommunications is a technology custom-made for rural America. It is a technology that has created a delivery system where miles and density simply don't matter. Now, the rural dweller can have access to information, education and even entertainment from his own back yard dish. But, the home satellite dish is more than an enhancement to the quality of life in rural America. This is the information age where use of the high technology and access to information will separate the winners and losers in the 21st century. This technology is essential because it will be a key link in providing educational opportunities, stimulating development and economic growth and fostering new jobs and opportunities.

Our goal today is to deliver satellite programming to these unserved consumers with local service orientation at an affordable monthly cost which is truly comparable to cable subscription service.

During the 1980's the rural economy has taken a dramatic turn downward. The Economic Research Service (US Department of Agriculture) recently completed a study which provides a great deal of information on rural population trends, job growth, unemployment and persons living in poverty. The report concludes that, in most major respects, the trends and outlook for rural areas are not favorable.

Almost half of all rural counties are losing population;

The number of rural jobs increased by only 4% since 1979, compared to an urban job growth rate of 13%;

In every year since 1980, rural areas have had higher unemployment rates than urban areas;

The rural poverty rate stood at 18.3% in 1985, compared to an urban rate of 12.7%; and

In addition, many non-metropolitan areas are experiencing a heavy loss of people with four or more years of college education, as well as a loss of high school graduates.

I thank the Committee for its indulgence, Mr. Chairman, in reviewing these statistics on the poor performance of our rural economy. It is indeed disheartening. Rural electric cooperatives see the human dimensions of these statistics every day. I believe our rural systems can be a force in helping to change the present unfavorable outlook for rural communities.

Satellite based telecommunications provides one of the answers. By extending the technology into rural communities which, because of their low density can never qualify for cable television, we can help close the gap between our nation's urban and rural economies. Unless rural areas have the same access to information and modern telecommunications as urban areas, they will increasingly be left behind as our country completes its transition to an information and service-based economy.

The NRTC is striving to bring the benefits of this new technology to rural America. Through the rural electric and telephone infrastructure, affordable satellite telecommunications services can be delivered.

It my pleasure to introduce to you, Mr. Chairman, and members of the Subcommittee, Bob Phillips. Mr. Phillips is the Chief Executive Officer of NRTC. He will present, in detail, our position on H.R. 2848.

I thank the Subcommittee for the opportunity to appear before you today and for your welcome of Bob Phillips.

Mr. **Kastenmeier**. Mr. Phillips, we would be delighted to hear from you.

Mr. **Phillips**. Thank you very much, Mr. Chairman. My name is Bob Phillips and I am the Chief Executive Officer of the National Rural Telecommunications Cooperative, NRTC.

Mr. Bergland has given you some of the background about our efforts to bring quality and affordable satellite television information, news and programming to rural America.

We have found that the delivery of satellite programming is a service business and it does depend upon quality programming, quality equipment and local advice. This kind of customer service has been a trademark of the rural utility program for over 50 years. To date, we have been successful in developing what we might call a beginning package.

The Rural Television package is not yet a complete consumer offering, and in our efforts to round out that package, we have attempted to negotiate with programmers in which rural television customers are interested. Several of those programmers, however, have refused to do business with the NRTC. This includes cable programmers, as well as those who up-link distant signals for broadcast stations via satellite.

Frankly, Mr. Chairman, we are amazed by those who have appeared before you and others to state that they want to help expand and develop the backyard dish industry, but then refuse to sell programming through NRTC and others that would like to distribute to the rural consumer.

I do want to stress that we wholeheartedly support H.R. 2848. While we offer some observations about particular provisions of the bill and we urge this subcommittee to adopt one amendment that we believe is essential if H.R. 2848 is going to accomplish its intended purpose.

This amendment would require satellite carriers to distribute these distance signals to all in a fair and equitable manner. There has been some disagreement about the royalty fee payment, but we believe that a clear and simple 12-cent fee is very straightforward and we support it.

A few cents difference, though, between the copyright fee paid by cable systems and what the home dish owner will pay under this bill is really insignificant when you consider the premiums that are now being charged by the satellite carriers to distribute these signals to the home satellite dish customer. Some of these so-called passive common carriers have not been so passive when it comes to serving the customer. They have charged prices that run from 500- to over 1,000 percent higher than what they would charge a cable company to distribute the same signal at the same level of service for a cable subscriber.

We respectfully suggest to this subcommittee that that is unfair. It is unfair for a passive common carrier to reap a windfall profit from the home dish owner by charging these exorbitant rates for carriage of signal and then refuse to allow distributors to enter the market. Besides the price-gouging, I might also add that the terms and conditions that they have levied on distributors that they choose to do business with and the dish owners to whom they sell have been very unfair.

Mr. Chairman, as you suggested last year when you introduced H.R. 2848, the bill should balance the rights of copyright owners by ensuring payment for use of their property right with the rights of satellite dish owners by assuring availability at reasonable rates for these retransmitted signals. In order to ensure the effect of your bill will be achieved, we want to urge you to place clear, nondiscriminatory language related to access, pricing, terms and conditions pertaining to these carriers who distribute distant broadcast signals.

In addition to this evidence that we are presenting today, based on our experience in the market, there is another significant factor that I would like the committee to examine carefully. Nearly all of the carriers who up-link "superstations" or network distant signals are reliant on cable subscribers and cable companies as their largest customer base. We have seen direct evidence of this cable dominance over carriers during the course of our negotiations to serve the home backyard dish market.

We submit that there is no real competition or reasonable prices for dish customers if these cable interests own or dominate most of the programming sources, including these common carriers, while being allowed to refuse to deal with independent, noncable affiliated distributors or, at best, deal only on their own terms, which we find very onerous.

We agree with the Motion Picture Association of America that the home dish industry needs both a compulsory copyright license and some protection from the cable industry in order to reach the critical mass of audience that would permit the backyard dish industry to develop its own original sources of programming. We would respectfully urge you to level the playing field and afford equal access to passive common carrier services with nondiscriminatory pricing and fair terms.

On a related subject, I would also note that we heard previous testimony by the major TV networks that Congress should not allow dish owners to receive their programming. H.R. 2848 will not stop them from scrambling their network feeds, but it will allow a rural dish owner access to a distant broadcast network signal. The networks and their affiliates have not reached the unserved rural homes having poor broadcast reception. There is no valid reason why these rural satellite dish customers should be denied the viewing of a broadcast network signal that a cable subscriber can receive, if they are willing to pay the cost of the copyright fee that a cable-compulsory license provides and the cost of the signal transmission.

I also wanted to note that NETLINK has come forward with the networks indicating that they have an outline of a deal purporting to "save the day." I called NETLINK this past Saturday from my Northern Virginia home, which does have access to network signals (although a couple of them are very poor, because I am in a "slope," so to speak.) NETLINK offered openly to sell me all six of their stations, including the three networks, for $84 if I would give them a credit card number on the phone. There was no inquiry about where I lived or whether or not I received the signals off-air.

Now, I might point out, in all fairness, that I discussed this with Mr. McCauley yesterday to let him know what I found out in calling his number. The real point here is that anyone can call in and there is really no way to check whether the caller can receive off-air network signals. So NETLINK's method of screening is not effective.

I think Congressman Synar hit the point right on the head when he said that a customer that receives off-air local signals wouldn't pay to receive them by satellite. The point is, I could receive them, although poorly, but to receive them by satellite, I would have had to pay NETLINK $84, or I could have bought three of the signals that SBN up-links for about $50. In neither case would I have made the purchase because I can receive them over the air.

I also wanted to point out that NETLINK has indicated that they serve the cable market. Some of our cooperatives have written in and sent us copies of articles where NETLINK, providing service through TCI, has taken independent stations and local PBS stations off the cable systems and substituted NETLINK's six channels. The city councils and the local leaders are not very happy about this.

I think that the independent television representatives should concern themselves perhaps with what is happening in today's technology, rather than way off in the future, when we talk about K-Band distribution.

I would say that we strongly disagree with the MPAA's suggestion that the statutory license created for C-Band should be restricted in this bill. We think that the bill should provide for all satellite distribution, whether it be C- or K-Band.

The final point I would like to make is that we sincerely applaud your efforts in introducing this bill. It does balance the rights of copyright owners and the needs of rural Americans for access to information. We do urge you to pass it, but we would like to see an amendment that would prevent carrier price-gouging in the home satellite dish market. Then let's everyone get on with the job of serving the home satellite dish customer in rural America.

Thank you, Mr. Chairman.

[The statement of Mr. Phillips follows:]

Statement
of
BOB PHILLIPS
Chief Executive Officer
NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE
before the
Subcommittee on Courts, Civil Liberties and
the Administration of Justice
of the
Judiciary Committee
U.S. House of Representatives

January 27, 1988

regarding
H.R. 2848
THE SATELLITE HOME VIEWER COPYRIGHT ACT OF 1987

Good morning, Mr. Chairman. My name is Bob Phillips. I am the Chief Executive Officer of the National Rural Telecommunications Cooperative (NRTC). Bob Bergland, the Executive Vice President of the National Rural Electric Cooperative Association (NRECA), has given you background information about the formation of NRTC and its efforts to bring rural Americans a quality affordable package of satellite-delivered information, education and entertainment programming.

We have found that the delivery of satellite television programming is a service business. It depends on quality equipment, local contact and advice, and the kind of customer service that rural utilities have provided for over 50 years. NRTC envisions that its member utilities will serve as a "one-stop shop" for rural consumers who wish to obtain authorization for scrambled satellite video programming, equipment and service. Today, some members are teaming up with local satellite equipment dealers rather than installing equipment directly. Others are making descramblers available on a lease/purchase plan at attractive monthly fees. Still others are offering entire satellite dish systems on the same basis.

Through NRTC, local utility members authorize the descrambling of programs for their customers with a computer linked directly to General Instrument's Direct Broadcast Authorization Center. NRTC's members also have the ability to provide financing for consumer equipment through the National Rural Utilities Cooperative Finance Corporation (CFC), a private, cooperative lending institution.

Together, NRTC and its member utilities have combined the buying power of a national cooperative with an established local service network for distribution of satellite television programming.

NRTC has been successful in developing what might appropriately be called a beginning package of programming services for home satellite dish customers. The "Rural Television" package is not yet a complete consumer offering. In our efforts to round-out the package we have attempted to negotiate with programmers rural residents are interested in. Several programmers have flatly refused to do business with NRTC. Others have agreed verbally and in writing to do business with us, but then reversed their decision or refused to negotiate. This list includes cable programmers and carriers who uplink distant broadcast station signals via satellite. Frankly, we are amazed by those who have appeared before you and by the others who say that they want to expand the developing backyard dish market, but refuse to do business with distributors like NRTC.

The programming presently offered by NRTC includes the following basic package of scrambled services: Cable News Network, Headline News, ESPN, CBN, WGN-Chicago, WWOR-New York, WPIX-New York, KTVT-Dallas. The "Rural Television" package also includes a tier of programming consisting of the three network affiliate channels offered through the Satellite Broadcast Networks (SBN), known as Primetime 24, WABC-New York, WBBM-Chicago, WXIA-Atlanta. NRTC is also offering a twenty-four hour premium movie service, SelecTV, through an arrangement with Starion Entertainment.

The distant broadcast signals are a popular feature of the "Rural Television" package. And we applaud United Video and the Satellite Broadcast Networks for offering their service to NRTC and for dealing fairly in the marketplace.

While NRTC is pleased to have our quality package of programming available for distribution, we are disappointed with the reluctance and refusals to deal on the part of other programmers.

NRTC entered the market to provide programming to rural utility members who would serve their consumers on the same wholesale basis as a cable company. We have set up our own "back office" and order processing service, direct authorization capability, a billing and collection system, and promotional programs. All of these capabilities exist at the local customer level and are administered by a known and trusted rural utility system.

On this basis we would expect comparable rates for the same product. We see no reason to discriminate against the home satellite dish owners because they receive signals via satellite rather than over a cable line. In fact, each home satellite dish owner makes a significant investment to receive service. First, the customer must purchase or lease the dish system, plus a stand alone descrambler or integrated receiver descrambler. And now with scrambling, they must also pay for programming. Compare this involvement and investment to a cable customer's monthly service bill which includes both the delivery system and the programming.

Because of this difference, it's logical to assume programming costs to dish owners should be considerably less than retail cable subscription service.

Despite the reasonableness of this logic, we in fact have been unable to negotiate rates comparable to cable wholesale prices for rural dish owners. Some of the contracts we have signed exceed the cable wholesale price by 500 to 700 percent, or more. We see no justification for this tremendous price differential.

In order to obtain some contracts, we have also been required to accept restrictions in the marketplace we serve and the administrative services we provide. We are very concerned about the effect of these restrictions on our service to rural America, and we continue our efforts to resolve these difficulties with programmers who will do business with us.

Saying all this Mr. Chairman, I want to stress that NRTC supports H.R. 2848. It's legislation important to the stability of the satellite dish industry, an industry that holds so much promise for rural residents.

In consideration of the legislation, we would like to offer our observations about particular provisions of the bill. And, we urge the Subcommittee to adopt an amendment which we believe essential if this bill is to accomplish its intended purpose. That amendment would require satellite carriers to distribute distant signals to all in a fair and equitable manner.

There has been disagreement among a number of interested parties concerning the royalty fee established in this bill. Some suggest that it is not comparable to the cable compulsory copyright fees and may be substantially in excess of the average charge per cable subscriber for the same signal. While we recognize that today and possibly in the future there may be some difference in the actual royalty fee paid for cable viewing versus satellite dish viewing of distant signals, the clear and simple 12 cent fee which is established in this bill is a straightforward resolution of the issue.

The cable industry and the Motion Picture Association of America (MPAA) can continue to battle in the courts over the cable compulsory fee calculation. However, NRTC supports the copyright fee as set forth by H.R. 2848.

NRTC was not involved in the developmental stages of this legislation when representatives of the copyright owners, common carriers, and the home satellite industry agreed to the royalty fee payment provision. We are pleased that what seems to be a fair compromise could be reached with the support of the motion picture industry.

The MPAA says it wants to see a healthy and competitive home earth station market develop with the assistance of federal policies that preserve competition and promote new entry.[1]

Unfortunately, however, there is a critical fact that has not been presented to this Subcommittee. While the copyright holders have been willing to help a new home satellite dish industry grow and allow important and popular television programming to be delivered to all reaches of our country, some of the satellite carriers that simply act as a distribution pipeline have seized an opportunity to gouge the home satellite dish customer.

A few cents difference between the copyright fees paid by cable systems, versus what the home satellite dish owner pays for receiving the signals direct, is insignificant when compared with the premiums now charged by these satellite carriers to distribute signals to the home satellite dish customer. This is the real issue.

Some of the so called "passive common carriers" have not been passive when it comes to serving the home dish customer. The carriers serving both the cable industry and home dish owners who have testified before this panel gave no indication of any increased cost to serve the home satellite dish customer. And, for good reason. There is no increased cost. Extending service to the home dish owner provides incremental revenue. Yet the prices for the home satellite dish customers run from 500 to over 1000 percent higher.

As I stated earlier, NRTC has come forward to purchase the signals from these "passive common carriers" and perform all of the functions of a cable system paying for carriage of the signal. Still the rates we have been quoted (and in some cases accepted because there was no other choice) have been unreasonably high.

In addition, some of the "passive common carriers" who are asking this committee's assistance to expand their business, free of litigation risk from copyright infringement, have refused to do business with NRTC and other legitimate distributors to the home satellite dish market.

---

[1] Testimony of Timothy A. Boggs, Vice President, Public Affairs, Warner Communications Inc. regarding H.R. 2848 on behalf of Warner Bros. Inc. and the Motion Picture Association of America, Inc., November 19, 1987.

We respectfully suggest to the Subcommittee that it is unfair for a "passive common carrier" to reap a windfall from the home satellite dish customer by charging exorbitant rates for the carriage of a distant signal. Much worse, some satellite carriers are refusing to allow distributors like NRTC to enter the market.

Since the copyright owners of the broadcast station programming have agreed to a legislatively-negotiated copyright royalty payment, one would think that at least the satellite carriers could distribute the signals on fair terms and conditions.

That is not our experience. Besides the price gouging, some carriers refuse to sell monthly service, offering only annual prepaid subscriptions. In some cases, satellite equipment dealers and distributors are required to pay thousands of dollars in advance for bulk subscriptions. While this provides convenient up front cash flow and security for the carrier, it places a hardship on the dealer or distributor and, in turn, places the home dish owner at an economic disadvantage. They too, must pay annually.

Requiring them to pay a year in advance will move the affordability of this new source of information beyond the reach of many.

We also note that the same common carriers, who have implemented these advance annual payment requirements, serve the cable market on a monthly basis. And, the cable company serves its consumers on monthly subscription fees.

Mr. Chairman, as you suggested to the Congress last year, H.R. 2848 should balance "the rights of copyright owners by ensuring payment for use of their property rights, with the rights of satellite dish owners by assuring availability at reasonable rates of retransmitted television signals."[2]

In order to assure that this will be the effect of the legislation, we urge this Subcommittee to place clear non-discriminatory provisions on access, pricing, terms and conditions pertaining the satellite carriers who distribute distant broadcast signals.

It appears that the drafters of the bill intended that satellite carriers would not be allowed to discriminate against a distributor in a manner which violates the Communications Act or rules issued by the Federal Communications Commission (FCC). (Section 119 (a) (4)) This language needs to be strengthened to clearly provide that the type of price discrimination and refusals to provide service to legitimate, qualified distributors is prohibited.

---

[2] Congressional Record, Proceedings of the 100th Congress First Session, Volume 133, No. 109, June 30, 1987.

This language should make it clear that any satellite carrier making a secondary transmission of a broadcast station signal shall not discriminate in charges, other than for volume discounts, between cable systems and home satellite dish distributors.
In this respect, we agree with the previous testimony of the satellite carriers stating that, "The private dish industry and those who serve it, such as these carriers, deserve the right to equal service without the threat of unnecessary and unfounded litigation."[3] The non-discriminatory language we have suggested should be very clear and leave nothing to the interpretation of courts or FCC proceedings which would be costly, lengthy and harmful to the development of the home satellite dish market.

In addition to the evidence we have presented, based upon our experience in the market today, there is another significant factor which the Subcommittee should examine carefully in consideration of this legislation.

Nearly all of the carriers, which uplink superstations or network distant signals, are reliant upon cable companies as their largest consumers. We have seen direct evidence of this cable dominance of carriers in our negotiations.

Netlink USA uplinks a package of broadcast network programming from the Denver area, a PBS station and a super-channel. In early 1987 we began discussions with Netlink about the purchase of their programming services. In March, Netlink sent a representative to meet with us and then followed with a letter and proposed contract. We began contact negotiations with them. A short time later, when it was announced that Western Tele-Communications, Inc. (WTCI) had purchased 40 percent of Netlink, we were advised that they were not going to serve the TVRO market due to the uncertainty of the copyright issues. They persisted in advising us that they were not going to serve the TVRO market, despite public advertisements to the contrary. Subsequently we made a written request to offer their network programming to our consumers, but received no response.

We learned in June that TeleCommunications, Inc. (TCI) reached an agreement to purchase another 40 percent of Netlink (in addition to the 40 percent share owned by WTCI). At the same time,

---

[3] Testimony of Roy L. Bliss, Executive Vice President and Chief Operating Officer of United Video Inc. on behalf of United Video Inc., Southern Satellite Systems Inc. and Eastern Microwave Inc. regarding H.R. 2848, November 19, 1987.

Netlink announced that it had reached an agreement with National Broadcasting Co., Inc. (NBC) to serve dish owners in the "white areas."

In November of this past year it was announced that TCI had also offered to acquire Tempo Enterprises Inc., the satellite carrier which uplinks Superstation WTBS. The Wall Street Journal indicated that the principal holders of Tempo agreed to vote their majority stake in favor of the sell out.[4]

We submit that there will be no real competition or reasonable prices for dish customers, if cable interests own or dominate all of the programming sources including the common carriers, while being allowed to refuse to deal with independent, non-cable distributors or, at best, deal only on their own onerous terms.

The home satellite dish industry needs both a compulsory copyright license and some protection from the cable industry "to reach the critical mass of audience that would permit it to develop its own sources of original programming."[5]

One way to ensure that the rural home satellite dish industry is treated fairly and encouraged to grow through competition, despite cable dominance and vertical integration, is to apply non-discriminatory marketing provisions to the common carriers who seek Congressional assistance in paving their way into this new market. We respectfully urge you to "level the playing field" by affording equal access to "passive common carrier" services and non-discriminatory pricing on fair terms.

On a related topic, Mr. Chairman, I would also respectfully note that we have heard previous testimony by the major TV networks in other proceedings indicating that Congress should not allow dish owners to receive their programming, because it interferes with their local affiliates off-air marketing area. They also state that less than 1% of television households are located in "white areas" where there is no off-air reception.

H.R. 2848 will not stop the scrambling of "network feeds," which networks claim to be private transmissions with affiliates, never intended for public viewing. But it will allow rural dish owners who cannot access the network programming off-air or by cable to view retransmitted over-the-air broadcast signals of network affiliate stations.

The networks and their affiliates have not reached these unserved rural homes because of poor broadcast reception. There is no valid reason why these rural satellite dish consumers should be denied viewing of the network programming if they are willing to pay the cost of the copyright fees and the satellite transmission of the signal.

---

[4] See "Tele-Communications Inc." Wall Street Journal, P. 28, November 9, 1987.

[5] Ibid, Boggs testimony, p. 8

The networks have agreed that the satellite signal reception should be monitored and restricted only to homes in "white areas," however there is little motivation for a dish owner to purchase network programming from a distant station if it is available free off-air from a local affiliate. This fact is borne out by our service statistics. Last month NRTC members sold 5,552 basic packages without the network services compared to 442 packages including them.

There is also concern about the number of satellite rebroadcast signals. In an effort to limit the numbers of "superstations" that qualify for the license, the bill restricts new distant signal transmissions unless they are, "secondarily transmitted by cable systems serving, in the aggregate, not less than 10 percent of all cable television subscribers,..." (Section 119 (d) (9) (B)).

This provision relegates the home dish viewers choice of programming to what cable subscribers choose to view. Sometimes it may not even be the cable viewers choice of programming but rather the cable companies selection. Nevertheless, we believe the intent is responsiveness to the home dish consumer's needs and the overall desire to help the satellite dish industry grow to become a new market for creative programming. We believe the bill should recognize the satellite dish consumers' programming interests and not necessarily those of cable companies or their subscribers.

It should also be pointed out that large cable multiple system operators like TCI and American Television and Communications Corp. (ATC) would again be in the driver's seat. With large cable subscriber bases these giants can easily manipulate the qualification standards.

Since satellite delivery is an expensive proposition and the ultimate goal of the copyright owners is to see the home satellite dish market become an entirely new market for creative programming, we see no reason to restrict the uplinking of new superstations to home dish owners under the compulsory copyright scheme.

We also want to note that the 7-year Sunset provision may not be sufficient, particularly if common carriers refuse to deal with non-cable distributors and others who can help build the dish market. NRTC would suggest a longer time for the market to develop before a sunset provision becomes operative, and before

Congress would be required to review the statutory license.

Finally, we strongly disagree with the MPAA's suggestion that the statutory license created for home satellite dish owners be restricted to only the "C-band" frequency range of reception. (It is highly likely that the home dish market will burgeon with the use of smaller dishes, made possible by higher powered satellites.)

On the one hand, MPAA says it wants the home dish market to grow and is willing to extend the use of the compulsory license for this purpose. However, MPAA is not willing to extend the use of the statutory copyright license to future generations of satellite hardware, hardware of more versatility and affordability and the power to greatly expand the market.

Mr. Chairman and members of the Subcommittee, we applaud your efforts in introducing H.R. 2848. It balances the rights of copyright owners with the needs of rural Americans for access to information.

We urge you to pass this bill out with an amendment to prevent carrier price gouging and cable domination of the home satellite dish market. Then, let everyone get on with the job of building the home satellite dish market and serving rural America.

Thank you for the opportunity to appear before you in support of HR 2848.

Mr. KASTENMEIER. Thank you, Mr. Phillips, for that comment.

I guess I don't have any particular questions. I don't know if you do, Rick, of Bob Bergland, who may or may not want to stay until the end of the questioning period, but if not, we will——

Mr. BOUCHER. I don't have any questions of him, Mr. Chairman.

Mr. KASTENMEIER. All right.

Let's go on to Mr. Brown, our concluding witness this morning. Rick.

Mr. BROWN. Thank you. Mr. Chairman, and members of the subcommittee, thank you for the opportunity to present the views of the Home Satellite Television Association, HSTA.

We acknowledge the valuable imput which the K-Sat satellite radio station and its many listeners have made toward the preparation of this testimony. Additionally, Amway Corporation, an independent-of-cable program distributor, also stands in support of these comments.

HTSA, as you know, is the trade association comprised of home satellite antenna owners and retailers. We wish to congratulate the committee on its diligent efforts to reconcile differences and to promote the expeditious passage of needed legislation.

Availability of satellite-delivered broadcast stations, including networks, is critical to the growth of this important industry, and more importantly, to consumers who should have the right of reasonable access to all such programming.

We think the Congress ought to be concerned, as Bob Phillips just said, about the growing control that multiple system operators are exerting over the lifeline of television programming. For example, it was recently announced that TCI, the nation's largest cable company, was purchasing Tempo Enterprises, which controls delivery of WTBS, Atlanta. TCI also controls NETLINK.

The distinction between cable carriers and cable systems has eroded. As a result, the availability and pricing decisions for home dish owners will be under the direct control of the cable industry. Cable has a natural inclination to keep prices to dish customers high so that operators, cable operators, will not lose customers who might otherwise switch to dish viewing. They fear competition.

For example, the cost of programming to dish owners who have already paid for their equipment and do not need to rent the cable plant is many times higher than the price of that same programming delivered to cable systems. WTBS is available for $20 per year to dish owners, a la carte. We estimate the charge to cable is less than 10 cents per month per subscriber. Add to that the estimated copyright charge of 12 cents and you get $2.64 per year per cable subscriber versus $20 to the dish owner. The markup to dish owners is 800- to 1,000 percent.

A large system, for example, a large cable system probably pays between two and three cents for WTBS versus the wholesale price quoted to Amway of 92 cents per month, a markup anywhere from 10 to 40 times at the wholesaler.

Thus, we have the following suggestions with respect to your legislation. First, a common carrier should be affirmatively required to provide dish owners and distributors, such as NRTC, Amway and others, the signal of any "superstation" it carries. According to the testimony of NRTC and the Amway Corporation, which has submitted written testimony, the evidence of failure to deal or deal fairly by the carriers is mounting.

For example, Amway has repeatedly requested the signal of WOR from Eastern Microwave since 1986 and still does not have a contract. In fact, last month, it was informed that Eastern had no plans to expand its distribution beyond Tempo and United.

Similarly, Amway has been negotiating with United Video, SSS and Tempo with no tangible results since 1986.

It is clear that the carriers intend to be in the distribution business themselves. Their role as passive carriers has disappeared. They are becoming programmers just like HBO, just like Cable News Network and just like ESPN. As such, they are and will continue to discriminate against noncable distributors, such as Amway, NRTC and others. This harms consumers by denying them competitive choice. Thus, it is essential that there be an affirmative duty to deal.

Nothing in the legislation specifically requires Eastern, for example, to provide its scrambled signal to any dish owner or distributor. The reference in the legislation to the Communications Act is not clear or dispositive of the issue.

Carriers should also be specifically required to provide service to entities that are not affiliated with cable systems, such as NRTC and others.

With respect to the prices that I had discussed prior, I think there should be provisions on price discrimination. It is inconceivable that the intention of this legislation is for carriers to make windfall profits. The provisions of the bill making it an infringement to discriminate against a distributor in a manner which violates the Communications Act is woefully inadequate.

The Act and FCC rules do not contemplate a situation where the carriers play such a dominant role as both a carrier and marketeer. The legislation—and I think that this is probably the most important point—should make it clear that the carriers cannot discriminate, other than in volume discounts, between the charges they make to cable systems for their subscribers and to satellite dish customers, including distributors, for dish viewing for their subscribers. Without such a provision, the price for programming will remain extraordinarily high.

The amount of the copyright fee itself, the 12-cent fee or whatever it may be, would be an irrelevancy compared to the distribution charge. If the carrier may no longer be passive, it must be made to be responsible.

In a similar vein, the copyright charge should be passed through to the consumer by the carrier without markup and should be separately billed in the billing so that one could keep track of it to see if there is discrimination.

To permit the combining of the copyright and distribution fee would, in essence, allow carriers, not the Congress, to establish copyright fees.

With respect to the eclipse and sunset provisions in the bill, the legislation will eclipse in four years and sunset in eight years. We think the legislation should continue in effect without specific eclipse or sunset. But at the very least, the eclipse period should be doubled in time. This request is moderate in light of the fact that the formerly infant cable industry, now 40 years old, has enjoyed the compulsory license for the last 12 years.

We would be required to negotiate in the marketplace under my proposal after only eight years and would have the supervisory power of the tribunal for another four, resulting in the same 12-year period presently enjoyed by cable.

With respect to other provisions of the bill, the bill limits the number of broadcast stations available to home dish owners to the number viewed by cable subscribers. We think it is unfair to make dish owners depend on cable viewing. This consigns home dish viewing opportunities to what cable companies believe is important.

Cable systems drop broadcast signals, we heard that today, in an era of nonmandatory carriage and they restructure their tiers to take advantage of copyright law decisions. Thus, the consumer often is denied programming and the copyright holders are denied compensation.

Satellite dishes obviate the need for such juggling. Consumers and copyright holders are better off with increased distribution and payment.

We also oppose any suggestion that the statutory license be limited to C-Band. Many believe that flat dishes or small dishes are the wave of the future. There is no reason to handicap this technology by excluding it from the statutory license.

We have also provided language to the staff on clarification of the liability of distributors such as Amway and NRTC to make clear that they would not be violating the Copyright Act.

With respect to the arbitration panel, it calls for a balancing of the relative roles of copyright owners and copyright users. We suggest that it be made clear that the copyright user in this case would be deemed to include the satellite television industry, including manufacturers, distributors and retailers.

Finally, with respect to the copyright fee, the bill establishes the payment of 12 cents per signal. Many suggest that the average copyright fee be the same as paid by cable on a per-subscriber basis. We would support such an amendment, but we also recognize that certainty exists with a fixed payment just as provided for in the legislation. What is more important is that carriers not be permitted to create their own nonstatutory copyright fees by abusing their status as carriers and charging discriminatory rates, as I discussed before.

I would be glad to answer any questions that the committee may have and we thank you for the opportunity to participate.

[The statement of Mr. Brown follows:]

TESTIMONY OF
THE HOME SATELLITE TELEVISION ASSOCIATION
CONCERNING
THE SATELLITE HOME VIEWER COPYRIGHT ACT OF 1987, H.R. 2848
BEFORE
THE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES
AND
THE ADMINISTRATION OF JUSTICE OF
THE HOUSE COMMITTEE ON THE JUDICIARY
JANUARY 27, 1988

By: Richard L. Brown

Of Counsel:
Brown, Finn & Nietert, Chartered
1920 N Street, N.W., Suite 510
Washington, D.C. 20036
(202) 887-0600

Testimony of Richard L. Brown

Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to present the views of the Home Satellite Television Association ("HSTA"). I wish to also acknowledge the valuable input which the K-Sat satellite-delivered radio station and its many listeners have made toward this testimony. HSTA is the trade association comprised of home satellite antenna owners and retail sellers of home satellite earth station equipment. The main purpose of HSTA is to promote the benefits of satellite technology for all members of the public. During this Congress, HSTA has also been privileged to testify on behalf of its membership on other important satellite viewing rights legislation, H.R. 1885, as well as on S. 889. HSTA wishes to congratulate the Committee on its diligent efforts to reconcile differing viewpoints and to promote the expeditious passage of needed legislation in this area.

Availability of satellite delivered broadcast stations, network, non-network, and public is critical to the growth of this important industry. Today, hundreds of thousands of American families, millions of people, do not have access to the full complement of these television stations. Often these individuals reside in areas which are too remote for broadcast or cable television service. Sometimes they reside in areas in which they cannot receive a quality broadcast signal due to terrain obstacles or other natural or man made impediments. HSTA believes that they too have a right to view television broadcast programming.

HSTA believes that H.R. 2848 is an important step towards a recognition of that right. The intent of this legislation is to remove the existing uncertainty as to whether satellite carriers are permitted to market broadcast programming to home satellite dish owners. We strongly agree that this uncertainty must be clarified.

As the satellites themselves, the ability of carriers to provide broadcast programming to dish owners is "up in the air." The carriers maintain that their service to home satellite dish owners is covered by the existing Copyright Act of 1976 (Title 17 of the United States Code) and sale to dish owners is thus not an infringement of copyright. This assertion is currently being challenged in network suits brought against Satellite Broadcasting Networks. The ultimate outcome of these lawsuits is uncertain. What is certain, however, is that while there remains doubt as to the ability of carriers to provide broadcast services to dish owners, this doubt adversely impacts both the home satellite dealer and consumer. Consumers do not wish to make the significant investment in purchasing a home satellite dish antenna if, in fact, they may lose valued broadcast signals in the near future. A decision against SBN in either of these actions could result in the loss of broadcast television signals to home satellite dish owners.

We support clarifying copyright legislation for yet another reason. American consumers desire the ability to choose. They wish to choose among different types of automobiles, brands of bread, and television programming. The choice of programming provided by cable television is one of the reasons that so many Americans have chosen to subscribe to that medium. Up until the advent of home satellite dishes, a consumer wishing to view distant, independent broadcast signals or network signals which were unavailable over the air, had but one choice — if it was available to them — that choice was cable television. By using a home satellite dish, however, that consumer has not only the ability to choose the means of delivery of these broadcast stations, but can also assure their availability. Also, the home dish provides some good old-fashioned American competition to cable television.

HSTA is particularly concerned about the growing control that multiple system cable television operators are exerting over the life-line of television programming. For example, it was recently announced that Tele-Communications, Inc. ("TCI"), the nation's largest cable television company, had purchased Tempo Enterprises, Inc. the parent company of Southern Satellite Systems, Inc. which delivers the signal of WTBS Atlanta, to cable television subscribers throughout the United States. As a result, future availability and pricing decisions with respect to that station for home dish owners will be under the direct control of the cable television industry. Already, because cable television and more particularly the largest MSOs are the major purchasers of that carrier's programming, they are able to exert great influence over the pricing and availability of that product to others such as home dish owners. Cable operators have a natural inclination to keep prices to dish customers high so that operators will not lose customers who might otherwise switch to dish viewing.

TCI also owns and controls Netlink which is providing network signals to "white areas." But if cable exists in an area, Netlink will not provide network signals to home dish owners. This is not competition. */

Already the cost of programming to dish owners — who have already paid for their equipment and do not need to rent cable plant — is many times higher than the price of that very same programming to cable systems. The WTBS signal is available for $20.00 per year to dish owners a la carte and at a somewhat lesser amount in packages. HSTA estimates that the average transmission charge to cable operators is less than 10 cents per month per subscriber. Add to that, the estimated copyright charge of 12 cents per month results in less than $2.64 per year per cable subscriber. The markup to dish owners ranges from 800-1,000 percent.

In order to remedy the problems in the marketplace, we have the following suggestions with respect to HR 2848.

---

*/ Network signals with nationally inserted commericals are available by satellite. Why shouldn't dish owners be able to view them? Where a local affiliate is available, it will be watched. Affiliates pride themselves on providing quality local programming At the very least, carriers providing network affiliates to consumers, should not be allowed to discriminate, as Netlink does, against dish technology in favor of cable television companies and against consumers.

Access and Distribution

First, a common carrier should be affirmatively required to provide to dish owners and distributors the signal of any superstation it carries. Recently, cable controlled services or proposed services such as Festival and Turner Network Television (TNT) have announced they do not intend to serve dish owners. The fear that future services will refuse to deal with dish owners is magnified now that TCI, the nations largest cable television company, has announced its intention to acquire Tempo Enterprises Inc., which owns the carrier of the most widely viewed superstation WTBS. According to testimony of NRTC and Amway Corporation, the evidence of failure to deal by carriers is mounting.

For example, Amway Corporation requested the signal of WOR-TV from Eastern Microwave, Inc. (EMI) in December of 1986 — over two years ago and still does not have a contract. On January 8, 1988, Amway was informed that EMI had no plans to expand its distribution beyond Tempo and United. Similarly, Amway had been negotiating with the Superstation Connection and United Video since 1986 with no tangible results. Amway Corporation also appears to have been given the run around by Southern Satellite Systems, Inc. and its parent and related companies.

It should be clear from all this that carriers intend to be in the distribution business, themselves. Their role as carriers will virtually disappear. They are becoming programmers — just like HBO and Cable News Network or ESPN. As such, they are and will discriminate against non-cable distributors which harms the consumer by denying competitive choice.

Duty to Deal

Proposed Section 119(a)(1) provides a compulsory license for transmission of signals for dish owners through the "private viewing" clause. However, nothing specifically requires, for example, that EMI actually make the scrambled signal of WOR-TV available to dish owners or distributors. It might be implied that Section 119(a)(4) creates such a mandate. But Section 119(a)(4) merely prohibits discrimination "against any distributor in a manner which violates the Communications Act of 1934 or rules issued by the Federal Communications Commission with respect to discrimination." The Communications Act provisions on discrimination are found in Section 202 of the Communications Act while the provisions of the Communications Act concerning a "duty to deal" are found in proposed Section 201 of the Communications Act. Section 201 is not referenced in Section 119(1)(4) of H.R. 2848. It is essential that an affirmative duty to deal — to sell programming to dish users and distributors — be included in the Copyright Act in order that there will be no confusion on this issue.

Within the context of a mandatory duty to deal, carriers should be specifically required to provide service to companies as well as to persons or entities that are not affiliated with cable systems, such as Amway Corporation and NRTC, for the further distribution of these signals to home earth station users. This will ensure competitive prices to the consumer.

Price Discrimination

As described above, consumers and distributors are presently being asked by carriers and their captive distribution arms to pay prices hundreds of percent higher than currently are paid for cable subscribers. It is inconceivable that the intention of this legislation is for carriers to make windfall profits. The provisions of Section 119 (a)(4), making it an act of infringement to discriminate against a distributor in a manner which violates the Communications Act of 1934, or FCC Rules in that regard, is woefully inadequate. The Communications Act and FCC Rules do not contemplate a situation where the carriers play such a dominant role as both a carrier and a marketeer. The legislation should make it clear that the carriers cannot discriminate (other than for volume discounts) between the charges (1) to cable systems for their cable subscribers and (2) to satellite carrier customers including distributors for private viewing for service to their subscribers. Without such a provision, the price for programming will remain extraordinarily high. In fact, the amount of the copyright fee, itself, would be an irrelevancy compared to the distribution charge. If the carrier must no longer be passive, it must be made to be responsible. We also see no reason for that matter why broadcast stations should not be permitted to uplink themselves.

Pass Through

Because the charge for copyright payment reflects an estimated parity with the charge the cable operator pays for copyright, on a per-subscriber-basis, then this copyright charge should be passed through (without mark-up) by the carrier to customers including distributors. Discrimination in distribution fees might be extremely difficult to determine if the copyright fee were not directly passed through and accounted for in carrier billing to distributors. To permit the combining of copyright and distribution fees would, in essence, allow carriers, not the Congress, to establish Copyright fees.

Clarification With Respect to Liability of Distributors

Section 111 is amended by the Bill by adding clause (4) that states that the provisions of Section 119 extend only to the activities of a "satellite carrier" with respect to secondary transmissions "for private viewing pursuant to a compulsory license under Section 119."

Because cable and non-cable distributors may be engaged in the process of the distribution of programming pursuant to the terms of Section 119, it should be made clear that such distributors are not making unlawful secondary transmissions by virtue of their activities in serving satellite dish owners.

Arbitration

The provisions of Section 119(c)(3)(D) establish standards to be considered by the Arbitration Panel. Clause (iii) calls for a determination of the relative roles of the copyright owner and the copyright user "in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk and contribution to the opening of the new markets for creative expression and media for their communication." It should be made clear that the copyright user in this case would be deemed to include the satellite television industry including manufacturers, distributors and retailers, all of which make significant contributions to the process of making copyrighted materials available to the public.

Eclipse and Sunset Provision

Pursuant to proposed Section 119(c), the legislation will eclipse in four years and sunset in eight years. Presumably this means that Congress believes the problem will be greatly ameliorated soon and in eight years; it no longer will exist. We would urge, instead, however, that the legislation continue in effect without specific eclipse or sunset. If Congress wishes to amend the statute at any time to delete the compulsory license it can, of course, do so. At the very least, the eclipse periods should be doubled in time. We believe this request to be moderate in light of the fact that the formerly "infant" cable industry, now forty years old, has enjoyed the compulsory license for the last twelve years. Under this proposal, we would be required to negotiate in the marketplace after only eight years and would have the supervisory power of the Tribunal for another four, resulting in the same 12-year period presently enjoyed by cable.

Do Not Limit Choice

Proposed Section 119(d)(9)(A) and (B) limits the number of broadcast stations available to home dish owners to those signals obtaining 10 percent of the cable viewing audience or those on the air by June 1, 1987. It is unfair to make the future opportunity for viewing of broadcast signals by means of home satellite antennas depend upon how many cable subscribers happen to choose to view a particular service. The effect of such a provision would be to consign home dish viewing opportunities to what cable subscribers, or more realistically what cable companies, believe is important. Relatively speaking, satellite dishes — not cable -- represent the medium of abundance and choice. As cable systems drop broadcast signals in an era of relaxed or non-existant mandatory carriage, and as they restructure their tiers of programming to take advantage of copyright law decisions, the consumer is often denied programming — and the copyright holders are denied compensation. Satellite dishes obviate the need for such juggling. Potential entrepreneurs wishing to bring increased broadcast signals to dish owners should not be required to serve 10 percent of cable homes first. Consumers and copyright holders are better off with increased distribution and payment.

Copyright Fee

We would like to address proposed Section 119(b)(1)(B) which establishes a payment of $ .12 per month per signal. We recognize that many in the earth station arena suggest an alternative to this approach: that the average fee paid for dish distribution corresponds to the average fee for cable distribution on a per-subscriber basis. We would support such an amendment. However, we also recognize that certainty exists with a fixed payment just as provided for in the legislation. What is more important is that carriers not be permitted to create their own non-statutory copyright fees by abusing their status as carriers and charge discriminatory rates, as previously discussed.

C Band

Finally we oppose the suggestions of motion picture interests that the statutory license be limited to C Band. Many believe that the small diameter dishes made possible by higher power and higher frequency satellites are the wave of the future for home dish owners. There is no reason to handicap this technology by excluding it from the statutory license.

Conclusion

HSTA thanks the subcommittee for the opportunity to present its views. We look forward to working positively with the subcommittee to help pass a copyright bill which is fair to the consumer and copyright holder alike.

Mr. **Kastenmeier**. Thank you, Mr. Brown.

One of the things that concerns us, mostly for purposes—and I addressed this question before to the other panel—of understanding, and that is the blurring of the roles and the legal relationships between carriers or common carriers or distributors or packagers and so forth.

I wonder whether you could edify us in terms of how you see this developing; what entities will necessarily develop? What role is it that cable will play which you suggest may be anti-competitive, because there is a sequence, it seems to me, of a lot of people here. It is more complex, probably, than pre-existing relationships.

We have the Motion Picture Industry at one point creating programming of a sort—other than sports and certain things—and supporting this ostensibly. We go all the way through the various means of distributing—that is to say, through television or through satellite—and then to satellites. Presumably then to common carriers and then to those who sell the signals, either to cable or to earth station owners.

There seems to be, as I say, more and more people involved and the roles are not clearly defined for us, as clearly defined as they were before, at least eight or 10 years ago.

I wonder if you would comment on how you see this evolving and what role can and should various entities play in terms of this particular area of delivering programming to dish owners?

Mr. **Brown**. Do you want to take a crack at it?

Mr. **Phillips**. Certainly, I will try.

Mr. Chairman, in our Rural Television package, I might just break down the various components. First, NRTC is a national cooperative, we have 500 members in rural America who are rural utilities; and we suspect that those rural members will be a one-stop shop for the customer. The customer could approach their rural utility and get anything from equipment and service to programming authorization for the various types of programming available on the dish.

Some of this would be provided directly by member utilities; some members will work with local dealers and others to make all of this service come together at the local level.

NRTC is a national cooperative and has entered into a contract with General Instruments DBS center, so that we can directly authorize customers' Video Cipher boxes to receive the programming instantly within 45 seconds. We can bring the hardware and the programming together in the field right at the same time, as a local service.

That puts us, really, in the role of being a program packager and perhaps a dealer or a distributor of sorts at the local level.

Within our package, we offer basic services like cable, such as CNN and Headline News, which is primarily a cable-produced and developed programming source, but they are also up-linked to cable head-ends by satellite and that makes them available then to the home satellite dish owner.

We have a contract to offer CNN and Headline News with our basic package. We pay CNN and Headline News on a monthly basis for the programming we buy from them and our local utility then bill that service to the customer on a monthly basis.

In addition, a very important part of our basic package is the "superstation" signals, as an example, United Video's package, WGN, KTVT, Dallas, and WWOR and the other New York station——

Mr. **Kastenmeier**. WPIX.

Mr. **Phillips**. WPIX, thank you.

Those program channels, are distributed in the same manner by us, but we purchase them from the up-linker or carrier, United Video. Of course, that is the subject of this bill, the copyright license is payable to the ultimate producers of the programming, because it is taken off-air by United Video and then viewed by our subscribers.

Another component, of course, is the network distant signals and we put those on a tier so that the customers who need those network signals and don't receive them off-air through cable or by another means can buy them. Right now, we are offering the Satellite Broadcast Networks signals, which is the three networks they uplink.

Mr. **Kastenmeier**. I didn't realize, frankly, that you had such a wide variety of programming that you are already offering.

To the point that you have described, I take it the cost of this array of programming is acceptable to you or do you find that in some respects it is excessive but necessary for you to pay?

Mr. **Phillips**. That is exactly the point, sir.

We think it has been necessary for us to get into the market and get started. We do not like the prices that have been required of us at the wholesale level; they are not fair; and simply they are not fair because they are not closely equivalent to what those same signal providers, or common carriers, or cable programmers charge a cable company to redistribute that service to the cable customer.

Mr. Brown gave you the example of WTBS, comparing a dime or 2 cents to 90 cents and a dollar, which would be the price to a distributor, and more for the home dish customer. We don't see any reason, any valid reason, for this price difference. There has been no testimony before this subcommittee or anywhere else in Congress with a justification for this higher cost.

The point is—and Mr. Brown stated it—cable's dominance over the TVRO industry because the proliferation of dishes would be a detraction to cable service. People would have more choice, and they could use a dish to obtain any number of signals they wanted that were available.

Mr. **Kastenmeier**. It was also indicated that in some instances—as I say, from the array of programming you are already offering—it doesn't seem like in many instances you have not been able to get the carrier to contract with you or offer you the service. I take it that happens to be an exception rather than a rule, however.

Mr. **Phillips**. On the contrary, sir. NETLINK that just appeared before you would be a perfect example, and it points out the cable dominance that I mentioned.

In March, 1987, when I came on the job, NETLINK's representation came to Washington and extended a contract to us to sell their six services on a wholesale basis. Later, when WTCI and then TCI purchased up to 80 percent of that company, they pulled that contract off the table, and said, "We are not going to sell to you at this time." The stated reason was that they were waiting for this bill to be passed so that they could clearly sell to us. Meanwhile, other carriers, like United Video and Satellite Broadcast Networks, were dealing with us. That is one example.

Another would be WTBS. We still have no agreement with WTBS. They want to charge us for a bulk number of subscriptions in advance, charge us annually, and only allow the customers to pay for the service annually. We are prevented from providing it monthly. They won't allow us to authorize the service through the General Instruments tier bit, for which we pay $6,000 a month to use. They don't want our service to be efficient or effective. They really don't want us as distributors in the market. So, no, sir, there are several programmers that won't deal with us, including carriers.

Mr. **Kastenmeier**. A signal such as that is not currently encrypted, is it?

Mr. **Phillips**. Yes. WTBS is encrypted, and NETLINK's services are encrypted, and there are others which are not the subject of this hearing. Those are cable services, such as Viacom's Showtime that won't deal with us.

Mr. **Brown**. Mr. Chairman, if I may add to that——

Mr. **Kastenmeier**. Of course. I wanted your input too, Mr. Brown. I just wanted a full discussion of the relationship. As a matter of fact, I did not realize that Mr. Phillips' organization was as deeply involved in delivering services as apparently it is.

But yes, Mr. Brown, from your perspective as representing not necessarily a cooperative or a distribution system that is responsible to its co-op membership or cooperative organizations but, rather, in terms of the ultimate consumer here, yes, I would like your view too about the changing relationships between carriers and distributors and how it finally reaches ultimately the viewer.

Mr. **Brown**. Thank you, Mr. Chairman.

The structural question that you are asking—probably nobody in the world remembers better than you the structure of how it was in 1976. It was pretty simple. We had the motion picture producers, the broadcasters, the cable operators, and the carriers, and the carriers were merely passive. In fact, they were required to be passive. The passivity notion was eroded in a few court cases. The carriers were taken to court for doing various things, such as inserting commercials, for example, and the courts said that was OK on a second feed; direct hook-ups between the television station and the carrier were also OK.

Now they have gone an extra step. The carriers have decided to serve a dish owner not at the request of a dish owner but go out there and market the signal themselves and be an entrepreneur, be a marketer, not a mere passive carrier, and that is a big, significant change.

Nobody, I don't think, in the earth station industry—dish consumers, manufacturers, dealers, or distributors of programming such as NRTC or Amway, which our law firm also represents—is opposed to that. We are not opposed to the carriers getting into the business themselves. It is a good business. It gets service out to the public, and that is why this legislation is needed.

But, on the other hand, we think they are being abusive. As a carrier they ought to be charging everybody pretty close to the same rate. But when they charge cable 10 cents, there can't be a justification to charge NRTC or Amway or any other non-cable distributor up to a thousand percent markup, and that is what we think you should control in the legislation. That will assure that the consumer will get the programming at a reasonable price.

The other structural change is that the earth station community, the dish community, has felt it very necessary for there to be distributors that are not aligned with cable. Cable doesn't really want to see dishes proliferate, because if they proliferate somebody that has a dish will not take cable, if they have cable available. So the more dishes, the fewer cable subscribers. Therefore, they have an incentive, a perverse incentive, to keep the prices high. If you have a distributor, such as NRTC, which can go out and buy the programming from any of these carriers at the same price cable buys, they can, in turn, sell it to the dish consumer at whatever price they want to, not at a jacked up price, and that will probably be at a lower price, and that is fair, that is competition, and that is what we would like to see in the bill.

Mr. **Kastenmeier**. I have a number of other questions. I wanted to talk about KU-band, and I wanted to talk about whether—somebody who suggested we ought to strike the word "common" out of "common carrier" in the copyright law in the bill—whether we ought to do that in your view as well, and a few other questions of that sort. I will get on to that, but at this point I would like to yield to the gentleman from Virginia.

Mr. **Boucher**. Mr. Chairman, thank you very much.

I would just like to pursue the line of questioning that you had undertaken.

I am very interested in at least getting on the record here from the people who are the experts in this subject a statement of the mechanism by which cable dominates the TVRO market. Now I think some of the answers that you have given perhaps imply an understanding of that mechanism, but let us talk about how it really works.

Mr. Phillips, would you like to describe that? How is it that cable dominates the TVRO market today? How is its conduct anti-competitive? Talk about that precise mechanism, if you will.

Mr. **Phillips**. Congressman, I think we should start right at the consumer level. The consumer is interested in the programming. The consumer doesn't buy a satellite dish because it is beautiful and they like to see it in their yard; they buy it because they want to receive entertaining programming, or news, or sports, or whatever it is that they would like to receive. It is that place where it really starts. Rural TV was perceived as a way to get that programming out to the consumer and to go and negotiate it for them. We thought that ours would be a normal distributor relationship with a supplier that wants to expand the market and serve a customer base. But when we got there, we found out that was not the case.

The programming services that we found to be very popular, such as CNN, Headline News, ESPN, and some of the others were created for cable, and they serve millions of cable homes. When you have a customer that buys 45 million units of your product per month, they are not too interested in talking to someone, like WRTC, that is interested in serving rural America and developing a few thousand dish customers here or there, especially when they see a potential that some day this might expand and invade their cable service areas.

What has happened then in recognition of K-band coming and the dish industry growing, I think, is that the cable companies, the large MSO's—multiple system operators—have begun to integrate vertically in the market. They have purchased the programming sources. Look at what has happened to CNN and Headline News the purchase of a portion of the Turner Organization by cable MSO's. If you look at Viacom's approach to the TVRO market, they have refused to sell to everyone except cable. They own Showtime and the Movie Channel; they say that they operate and control MTV and VH1, and that they have exclusive TVRO distribution rights with them. They also say they are in control of Nickelodeon. HBO and Cinemax have indicated that they won't sell to us. They want to control that programming themselves.

Mr. **Boucher**. Let me just stop you there. What is their affiliation with cable, and how does cable prevent them from selling to you? What I am trying to get at is the precise way that cable dominates. So far, what you have suggested is that one way is by simply buying the program sources.

Mr. **Phillips**. Exactly.

Mr. **Boucher**. And if cable owns the programmers, then they are in a position to say, "We are not going to deal as programmers with people who want to be third party packagers." That is understandable. Is there another mechanism? Is there some other way that they are able to restrict your ability to go buy from the programmers?

Let me coach you a bit, if I may.

Mr. **Phillips**. Sure.

Mr. **Boucher**. What I have heard said—and I am trying to get some verification of this—is that oftentimes even in areas where cable television is not providing cable television service, they wind up being the sole distributors of the unscrambled signal for a geographic area, so that if I am an owner of a backyard dish and I live 10 miles out of town, cable may not be available to me, but if want to subscribe to a scrambled service, the way that I get it is to call the local cable company in town, and they then are the sole distributors of that signal. They are charging a mark-up for the service they provide, which may be quite high and may tend to be anticompetitive, because ultimately they may seek to provide cable service out into that area. Is that a real situation, or have I just been misled?

Mr. **Phillips**. No. That is absolutely real. In fact, I was talking to you about those that have purchased programming sources, and they refuse to deal with any distributors except their cable affiliates, and that is exactly what has happened. They will allow a cable affiliate to serve in the franchised area and maybe an adjoining county around the cable area. So that is really the only source for the programming. An example would be Viacom, which is a combination cable company/programmer. You can buy from a cable company that licenses them, or you can buy from them direct, and, other than that, you can buy their program service with a piece of equipment but the customer still belongs to Viacom.

Mr. BOUCHER. So when you go then as a third party packager to one of those programmers using local cable companies as their sole source of distribution of the unscrambled signal, what you are being told is, "No, we are not going to deal with you; we have our own mechanism for distributing the signal set-up."

Mr. PHILLIPS. Absolutely. And another example I was going to give you of a programmer that is not owned by cable services is ESPN. ESPN has set up a marketing scheme for the TVRO industry that includes those cable affiliates, and they have carved out the franchised areas as exclusive territories for them and possibly a couple of other distributors which they are closely aligned with, but not NRTC. We have been able to contract with ESPN but only in a limited area outside of those cable boundaries.

So yes, the market is being carved up as we speak today.

Mr. BOUCHER. I think that is informative.

Against that background, let me just get you to give us a little status report on where you are. I happen to think that what you are doing is enormously encouraging from the standpoint of backyard dish owners. They are going to be able to have what you call a single-stop shop to acquire a large basket of signals at one time and for a reduced price over what they are having to pay today, if your goals are realized.

So tell us where you are. About how many signals do you have at the present time that you can sell? How many customers do you have? And perhaps even more instructive than that, how many programmers and which ones have said to you, "No, we will not deal with you because we have our own means of distribution through local cable companies or otherwise"?

Mr. PHILLIPS. Congressman Boucher, in my prepared remarks we have given the highlights of the Rural Television package. We have a basic package that includes CNN and Headline News. We have ESPN, as I mentioned. We have the Christian Broadcasting Network (CBN). We offer the United Video "superstation" packages as part of that basic—WWOR and WPIX (New York), and KTVT (Dallas). That is our basic package of scrambled services, and we have recommended to our local affiliate utilities that is a $9.95 value at retail right now. We think that is high, of course, but it is reflective of our wholesale deals.

In addition to that, we include the three broadcast networks that SBN (Satellite Broadcast Networks) provides, and that is a recommended value of about $4 a month. That is WABC (New York), WBBM (Chicago), and WXIA (Atlanta).

In addition, we have just concluded a letter agreement with Select TV, which is a 24-hour premium movie service. We entered into that agreement through Starion Entertainment, a subsidiary of Amway, which holds the exclusive marketing rights to Select. We are distributing through them to the marketplace.

We launched this program that I mentioned in October 1987, and we began signing up rural utility members to distribute it. Today we have almost 500 members of NRTC—that is local rural utilities—participating across 45 States, and we have 200 of them that already have the computer in place to authorize the programs instantly at the customer's address.

Mr. **Boucher**. Let me interject at this point. Are you planning ultimately to offer these services outside of the areas where you have utilities in place?

In my congressional district, for example, you have utilities in 2 out of 21 counties. What about those other 19 counties? Will they be able to have the benefit of your services at some point?

Mr. **Phillips**. The original concept was to serve the rural areas that we operate in, and we are trying to get that coverage basically where these rural utilities serve, not only their own customers but customers across the road and, you know, in other areas of the county.

The only limiting factor to that, frankly, would be our contracts with programmers, and some of them have strictly limited us only to those areas that we serve in, so we cannot go everywhere.

Mr. **Boucher**. You would like to, though, if you could?

Mr. **Phillips**. I think we would like to get the job done. We would like to serve every rural home that would like this service.

Mr. **Boucher**. And you would have the capability to do that beyond just the area where you provide electric service today?

Mr. **Phillips**. Absolutely. The technology permits that, and it is a very real possibility.

Mr. **Boucher**. The only other part of my question is, how many programmers have just closed the door on you, said, "No, we are not going to allow you to distribute our signal"?

Mr. **Phillips**. Previously I mentioned Viacom and those services that it represents—Showtime, the Movie Channel, MTV, VH1, and Nickelodeon. Showtime has said they control those and they are not available to us. HBO and Cinemax—HBO, the other premium movie provider, has said, "Well, we might entertain some type of an arrangement with you," but they have indicated that they are waiting on word from the National Cable Television Association to let them know if it's OK.

We have been talking to other program sources, like USA Network and Lifetime. We have not come to a final deal, but they have promised to do that. The Nashville Network is an interesting one. They sent two letters to us in the early stages last year and said they would sell to us and mentioned pricing but to date they have refused to conclude any contract with us.

The Disney Channel has not yet indicated they would sell through us. We have courted them since the beginning because we have felt that Disney was very important to our rural audience constituency. They have indicated verbally that they are going to soon announce their TVRO market plans, but they have indicated they are not ready to make any announcement regarding whether we have been included as distributors.

Mr. **Boucher**. Well, I guess for present purposes the door has been closed in your face by a number of programmers.

Mr. **Phillips**. Absolutely, sir.

Mr. **Boucher**. Well, I appreciate your answering those questions. That is very informative. I wish you a lot of good luck with your efforts. You have certainly got a supporter here.

Mr. Chairman, my time has expired. I thank the chair for its indulgence.

Mr. **Kastenmeier**. Just to follow up with respect to the recommendation that we strike "common" out of "common carrier," do you also support that?

Mr. **Brown**. We don't think it matters if you say "common carrier" or "carrier" so long as you state the rules, and we suggest that the rules be stated very clearly that these carriers must provide the programming to all comers if they sell it themselves and to customers as well as other distributors and sell it at the same price as they sell to cable and take into account volume discounts, that would be OK. So as long as you set the rules of what they must do, we don't care what you call them.

Mr. **Kastenmeier**. You heard the preceding seven or eight witnesses, and I would like to ask you in connection with that, I think maybe it was Mr. Bergland if it was not Mr. Phillips who said that you had the membership potentially of 11 million, 7 million beyond cable, which means something with respect to cable, but what does it mean with respect to "white areas" and "non-white areas"? Where are you left with respect to that distinction?

Mr. **Phillips**. Congressman, that is a difficult question. I think you heard the responses of the networks. They are not even confident of their 1 percent number, and we quite agree that that is probably the case. We don't know how many live within the grade B contour or wherever they can't receive the network signals.

As far as cable goes, we are in the very unpopulated, remote areas where cable is not extended. There is certainly a large number, but I can't quantify the extent of the signal penetration.

I could give you the statistic that out of the 6,000 packages that we have sold so far, only 500 customers have taken the network signals. It is the second optional tier. That substantiates my point that if people are already receiving those signals off air, they wouldn't pay extra to get them. Our expenience bears it out. Out of 6,000 packages sold, only 500 have purchased the network signal.

Mr. **Kastenmeier**. Do you believe that the other people receiving signals who subscribe to your service are able to get network signals off air without any difficulty? In other words, the dish isn't involved at all in that process.

Mr. **Phillips**. That is correct, and I have heard, in talking with our member utilities, that in some of those cases the customer might not receive all of the networks; they might receive one or two signals well and the remaining signals are fuzzy; but in any instance, they are not willing to pay the additional cost to buy it over the dish.

Mr. **Kastenmeier**. I think it was Mr. Padden who illustrated that there is new technology coming up beyond the C-band, that there may be other, smaller diameter dishes that are going to be available. We have not really had very much testimony on that point. I gather both of you would oppose a limitation to C-band only, although I think others fear that going to a KU-band, or contemplating KU-band or anything of that sort, is a different ball game. How important is that to you in terms of issues in this bill?

Mr. **Phillips**. Mr. Chairman, if I might respond, it is very important to NRTC. We think that the coming of KU-band will greatly increase the ability to penetrate the rural areas and particularly those customers that can't afford a dish system today. I think you heard testimony when they showed you the flat plate antenna that in mass production that antenna would cost $400. We have heard additional information from suppliers that the antenna, the receiver, and the decoder chip installed could be in the $600 range for the whole unit. Well, that virtually cuts a satellite dish system, according to today's prices, in half or less than half, and that will greatly enhance the ability to serve the rural satellite dish customers.

We welcome that new technology, and we would note for the record that we are really only talking about applying a license to distribute again "superstations" and network signals for a limited amount of time, and we think it is entirely appropriate, even in light of MPAA's opposition. MPAA wants to help this TVRO market grow, and I submit to you that the KU-band will help the satellite dish market grow . This is the whole purpose. We can deliver and develop programming for the satellite dish customer that is independent of cable.

Mr. BROWN. Mr. Chairman, may I add to that?

Mr. KASTENMEIER. Yes, Mr. Brown.

Mr. BROWN. When dishes first came into use, they were 10 meters in diameter. In fact, there was an FCC requirement that you must use a 10-meter dish. When the deregulation occurred in 1979, I think, the dishes became 10 feet in diameter. Today in many parts of the country, you can get perfectly adequate signals with 4- to 6-foot dishes. This is a smaller dish, and we ought not let the technology be hampered at all by the legislation. We ought to let the technology develop and let it go where it goes. Those dishes that were 10 meters cost $100,000. Now a dish can cost about $1,000.

Mr. KASTENMEIER. Thank you.

One other issue, maybe not necessarily the most important issue but still something which may be of difference, particularly between national rural telecommunications and broadcasters, and that is the SBN situation. I take it that to the extent any legislation, or I suppose resolution of court cases, would adversely affect the ability of SBN to deliver network signals to you, Mr. Phillips, you wouldn't be able to deliver any network signals currently. Is that the way you see it?

Mr. PHILLIPS. That is exactly correct, Mr. Chairman, and we only have a contract with SBN. NETLINK has not agreed to do business with us, so we would have no way to deliver those network signals.

Mr. KASTENMEIER. Well, I thank you both for your comments on the bill and some of the issues that are obviously intriguing that affect both programmers or packagers and certainly users.

I just have two final questions, one of Mr. Brown, and that is whether or not the organization that you represent here today and something called K-SAT, which is the radio station, I guess, that had a number of amendments they wanted to offer on the bill, whether HSTA and K-SAT are in agreement, because there is a similarity, I think, in your approach. I just wondered whether you were absolutely in agreement or sort of in agreement or whether there is any substantial difference.

Mr. **Brown**. At this point in time, I can assure you that there are no substantial differences, and we are essentially in total agreement on the testimony that was delivered to you today.

Mr. **Kastenmeier**. Thank you.

The last question that I have of Mr. Phillips is, are there any other organizations that are now or are likely to be, that you know of, engaged in packaging and delivery of signals to satellite dish owners, other than your organization and perhaps Netlink? Are there any other similar organizations that are organizing packaging for general viewership of satellite dish owners?

Mr. **Phillips**. Other than some of the programmers themselves, and working through their cable company owners, or cable company affiliates, the only other packager that I am aware of that is involved in this business in a national way is Amway Corporation that Mr. Brown mentioned. Other than that, I don't really see anyone on the horizon. I don't mean to offend any other parties, but that is really it.

Mr. **Kastenmeier**. Mr. Brown?

Mr. **Brown**. Not to be repetitive and also to be brief, Amway's experience in obtaining programming is not nearly as good as NRTC's. It has two programming contracts, one with CBN and one with Select TV, which doesn't sell its movies to cable, so there is no real problem getting that.

We kind of believe on the Amway side of the table that NRTC has gotten more programming because there is a public interest endowment with NRTC because of the rural co-ops. They have initially stated they only intended to serve rural areas as opposed to service nationwide, and in recognition of that at least the Commerce Committee decided that they would pass legislation, and legislation has passed the Commerce Committee, that requires mandatory dealing with all third-party packagers, and that will be before the full Senate shortly.

Mr. **Kastenmeier**. I don't know an awful lot about Amway, but my recollection is that it has been involved in broadcasting. Didn't it own Mutual Broadcasting Radio Service?

Mr. **Brown**. Yes, it did. It owned Mutual.

Mr. **Kastenmeier**. Well, I thank you both for your contributions today. Obviously, many questions have been answered and many questions raised. I trust we will not require another hearing. I think we have heard from all the parties that we need to hear from. And I would hope that the committee, within the next 30 days or so, can get together and start dealing with these questions and perhaps move to markup. It is my objective, and I think most of my colleagues share it, that we would like to see some action, some completion, this year on this bill, and to do that we will have to move promptly.

We appreciate everyone who has testified here today. I think it has been very helpful to the committee, and we thank you.

The statement of Dr. William Duhamel, president of Duhamel Broadcasting Enterprises, on behalf of 97 television stations, is also accepted for the record.

[The statement of Dr. Duhamel follows:]

Statement of

Dr. William F. Duhamel, Sr.
President, Duhamel Broadcasting Enterprises

on behalf of

THE 97 TELEVISION STATIONS

before the

Subcommittee on Courts, Civil Liberties,
and the Administration of Justice
Committee on the Judiciary
U.S. House of Representatives

January 27, 1988

SUMMARY

The 97 Television Stations, an informal association of small market, network affiliates, opposes the Satellite Home Viewer Act of 1987 in its current form. As currently drafted, the proposed legislation has the potential to unnecessarily undermine the existing contractual relationships within the national communications architecture. That national architecture has generally worked well to provide nearly universal television service in this country. No one understands this better than the small market broadcasters who have spent millions of dollars to expand the boundaries of television service.

While the bill may be intended to put the backyard dish industry on a par with the cable industry, there is an important distinction in that the existing cabld compulsory license is subject to a requirement that duplicating network programming be deleted from distant signals. This network nonduplication requirement, plus the FCC's proposed re-establishment of syndicated exclusivity, represent important safeguards in any statutory licensing scheme for television programming.

Therefore, The 97 Television Stations support the following changes in the bill:

- restricting its operation to geographic "white areas"
- requiring deletion of duplicating programming from distant signals

The 97 Television Stations also proposes that the legislative sunset be reduced from eight years, and that the bill require TVRO program distributors to educate their customers regarding the expiration of the statutory license.

Statement of
Dr. William F. Duhamel, Sr.

The 97 Television Stations is an informal association of television broadcasters affiliated with the three major national networks and located primarily in smaller markets. Taken as a whole, the association's 124 member stations[1] provide free broadcast television to millions of households in rural America. We serve such markets as Durant, Oklahoma; Mason City, Iowa; Minot, North Dakota; and Elmira, New York.

As local broadcasters, members of the 97 TV Stations fulfill an important role in the national communications architecture. That role includes the provision of both unique local programming and national programming acquired from either program syndicators or one of the national networks. To provide this service, these local broadcasters each must invest -- and risk -- millions of dollars for capital plant (studios, transmitters and towers) and for operations. Many stations also have invested considerable sums in providing boosters to reach additional homes in even more remote locations. All stations spend substantial amounts to market their product, advertising their programming and developing a positive image in the community. Particularly for those serving the smallest markets, these businesses are relatively marginal considering the size of the investment required and are

---

1/ A list of The 97 TV Stations members is attached.

certainly not nearly as profitable as network affiliates in larger markets.[2]

As a general matter, the existing architecture works quite well to provide television service to virtually all Americans. The longstanding government policy of allocating channels to as many communities as possible,[3] consistent with efficient use of the spectrum, has maximized the availability of local broadcast outlets and made service available to upwards of 98 percent or 99 percent of American households. All parties benefit from this architecture. Millions of Americans get free, over-the-air service, including both local and national programming, and program producers and distributors get an efficient way to reach an extraordinary percentage of potential viewers. Indeed, the number of communities served by their own television station continues to grow.[4] This growth, plus the proliferation of television boosters and translators that can be expected as the result of recent actions by the Federal Communications Commission,[5] and the continued licensing of translators and low power television stations to many new communities,[6] all show that substantial progress continues to be made towards providing universal television service in the United States.

---

[2] The capital investment in transmission facilities for major market stations serving a densely populated area like Washington, D.C. need be no greater -- and often can be less -- than that in a small market station serving large, sparsely populated areas.

[3] Section 307(b) of the Communications Act of 1934, as amended. 47 U.S.C. § 307(b).

[4] Last year, at least eighteen new television markets were established in communities previously unserved by full-power television stations.

[5] Report and Order in MM Docket No. 87-23; FCC 87-244, 52 F.R. 31398, August 20, 1987; Public Notice, Federal Communica-
(continued...)

Our principal concern with the Satellite Home Viewer Act of 1987 is that insufficient consideration appears to have been given to its impact on the existing national television architecture, and on small market stations in particular. While we are sympathetic with the concerns of those who seek to further expand service to the public, it is important to examine the full impact of a statutory license and to weigh judiciously the costs and benefits of the government intervention being proposed. We believe that when those costs and benefits are weighed, it is clear that sound public policy either dictates against any legislation or requires the substantial modification of the pending bill.

The major problem with the legislation from our perspective is the absence of any provision limiting its operation to backyard dishes in "white areas," those rural and remote areas that are not presently served by terrestrial broadcast facili-

---

5/(...continued)
tions Commission, Mimeo 3288, released May 18, 1987 (the public notice announced the opening of a low power television/television translator filing window. Before the opening of this filing window, applications for such facilities had been severely restricted for several years. This new procedure and the additional filing windows that are anticipated in 1988 are expected to greatly increase the numbers of these stations).

[6] In the last six months alone, nearly 500 translators and low power television stations were awarded construction permits by the FCC.

ties. Without such a provision, the bill clearly has the potential to undermine the existing relationship between the networks and their affiliates -- and thereby reduce the effectiveness of the current broadcast system to provide nearly-universal service.

Simply put, as small market broadcasters lose the exclusive programming that they have bargained for with the networks and syndicators and, as a result, they lose viewers to distant broadcast signals brought in by satellite, it will become increasingly difficult for these broadcasters to maintain their current levels of service. Some will have to cut back on expansion plans, others will cut back on the quality of their current operations, and still others will cease operations altogether.

The 97 Television Stations is not opposed to competition from the backyard dish industry, but that competition should be fair. As distributors, we have already negotiated in the marketplace for our programming. If the dish industry wants to compete as an alternative program distributor, then it too should negotiate in the marketplace for programming. It may well be successful on that basis, as the prospective Netlink agreement with NBC indicates. But it is simply not fair for the backyard dish industry to have an automatic right to tap into the programming that is at the heart of the local broadcasters' business. The copyright owners and program distributors, including the networks and syndicators, do not benefit from such a result; they reach more homes using the existing method of distribution. The distant station whose signal is imported does not benefit; the car dealers and other local advertisers that the station sells to are not interested in reaching distant audiences. Viewers who are able to get the same programming from their local stations do not benefit in any significant way. And local broadcasters certainly do not benefit from having a national distributor piggybacking on the years of effort that the local stations have made to build their image in the market and an audience for their programming.

The Federal Communications Commission has recognized the important role that property rights play in increasing the diversity of programs available to consumers. The FCC's recent proposal to reinstitute a form of syndicated exclusivity is addressed to this need to preserve a marketplace allocation of programming resources.[7] Any legislation that seeks to resolve the problems of program availability to TVRO owners should be consistent with this important FCC policy.

Although there may be some proponents of the bill who argue that it is appropriate in order to put the backyard dish industry on the same footing as the cable industry -- which has a compulsory license as a result of the Copyright Act of 1976 -- there is an important difference between the cable license and that being proposed for TVROs. The big difference in that cable's compulsory license is subject to the FCC's network nonduplication rules, which require the deletion by the cable operator of any network programming carried by a distant signal when that same programming is available on the more local television station. These rules -- as well as rules regarding syndicated programming -- were in effect when the Copyright Act of 1976 was adopted and they have consistently acted to preserve the contract rights of the local broadcaster.

---

[7] Notice of Inquiry and Notice of Proposed Rulemaking, General Docket No. 87-24, FCC 87-65 (April 23, 1987).

Thus, the 97 Television Stations can support the proposed legislation only if it is modified to limit its operation to white areas or if it provides for the deletion of duplicating programming from distant signals. We recognize that designing legislation that is capable of meeting these concerns may be difficult, and that the technical and administrative implementation of any such scheme may be burdensome, and we are prepared to work with the bill's sponsors and others to attempt to solve those problems. If they cannot be solved, however, we cannot support the legislation as it now stands.

Another concern of ours is the length of the sunset provision. Is there any evidence that an eight-year period is required? In the absence of compelling evidence to the contrary, we would suggest a much shorter sunset period of, say, three years. Also, it seems to us that, just as the TVRO industry has used the (unjustified) expectations of backyard dish consumers to support the need for this legislation, unless something is done in the future to educate those dish owners, those expectations will be even greater in eight years. Therefore, we suggest that carriers providing service to dish owners be required to notify those owners that the programming is being provided pursuant to legislation that is scheduled to sunset by a specific date. Such a provision will help to insure that consumers will not be caught by surprise.

In sum, The 97 Television Stations urge the Subcommittee to move cautiously with this legislation and to consider the full impact of its passage on the distribution of television programming in the United States. When the full picture is in view, we think you will agree that, unless the legislation is significantly limited in scope, it may have unintended costs in terms of disruption to the effective provision of terrestrial broadcast service in small markets that far outweigh the bill's intended benefits.

* * *

William F. Duhamel, Sr. is President of Duhamel Broadcasting Enterprises, licensee of four television stations in South Dakota, Wyoming and Nebraska. In addition to helping found The 97 TV Stations, Dr. Duhamel is a member of the boards of the National Association of Broadcasters and the ABC Television Affiliates Association.

APPENDIX A

COMPANY	STATION	LOCATION
KXJB-TV	KXJB	Fargo, ND
	KCMT	Alexander, MN
	KNMT	Walker, MN
Eagle Communications	KECI	Missoula, MT
	KTVM	Butte, MT
	KCFW	Kalispell, MT
	KIEM	Eureka, CA
Sawtooth Communications	KIVI	Boise, ID
Ponderosa Television, Inc.	KTVZ	Bend, OR
KTVH, Inc.	KTVH	Helena, MT
1st National Broadcasting	KXWY	Casper, WY
	KFWY	Riverton, WY
	KRWY	Rawlins, WY
Duhamel Broadcasting Enterprises	KOTA	Rapid City, SD
	KDUH	Scottsbluff, NE
	KSGW	Sheridan, WY
	KHSD	Lead, SD
KMTV Broadcasting, Inc.	KMVT	Twin Falls, ID
The Post Co.	KIFI	Idaho Falls, ID
Price Broadcasting Co.	KIDK	Idaho Falls, ID
	WJSU	Anniston, AL
KMTR, Inc.	KMTR	Eugene, OR
NWG Broadcasting Co.	KIMA	Yakima, WA
	KETR	Pasco, WA
	KLEW	Lewiston, ID
Montana Television Network	KTVQ	Billings, MT
	KRTV	Great Falls, MT
	KPAX	Missoula, MT
	KXLF	Butte, MT
Glendive Broadcasting Co.	KXGN	Glendive, MT
McGraw-Hill Broadcasting Co., Inc.	KERO	Bakersfield, CA
	KGTV	San Diego, CA
KGET TV, Inc.	KGET	Bakersfield, CA

COMPANY	STATION	LOCATION
Golden Empire Broadcasting Co.	KHSL	Chico, CA
Sacramento Valley Television, Inc.	KRCR	Redding, CA
California Northwest Broadcasting Co.	KVIQ	Eureka, CA
Retlaw Broadcasting	KJEO KMST	Fresno, CA Monterey, CA
San Joaquin Communications Corp.	KSEE	Fresno, CA
KNTV, Inc.	KNTV	San Jose, CA
Blair Broadcasting of California	KSBW	Salinas, CA
Shamrock Broadcasting Co., Inc.	KEYT	Santa Barbara, CA
Broadcasters of Mississippi	WJTV	Jackson, MS
WICS-TV	WICD	Champaign, IL
First Charleston Group	WCIV	Charleston, SC
Jackson Telecasters, Inc.	WBBJ	Jackson, TN
East Texas TV Network	KLMG	Longview, TX
Southeastern Ohio Television	WHIZ	Zanesville, OH
Eastern Oklahoma Television Co., Inc.	KTEN	Durant, OK
KQTV	KQTV	St. Joseph, MO
WAGM-TV, Inc.	WAGM	Presque Isle, ME
Marsh Media	KVII KVIJ	Amarillo, TX Sayre, OK
Spartan Radiocasting Co.	KIMT	Mason City, IA
KOUS Broadcasting, Inc.	KOUS KYUS	Hardin, MT Miles City, MT
North Platte Television, Inc.	KNOP	North Platte, NE
Nebraska Television Corp.	KHAS	Hastings, NE
New Mexico Broadcasting Company	KGGM	Albuquerque, NM

COMPANY	STATION	LOCATION
Spokane Television, Inc.	KTHI	Fargo, ND
Sunshine Television, Inc.	KDRV	Medford, OR
Columbia Empire Broadcasting Corp.	KNDO	Yakima, WA
	KNDU	Tri-Cities, WA
Eugene Television, Inc.	KBCI	Boise, ID
	KVAL	Eugene, OR
	KPIC	Roseburg, OR
	KCBY	Coos Bay, OR
Donrey Media Group	KOLO	Reno, NV
Pikes Peak Broadcasters Co.	KRDO	Colorado Springs, CO
	KJCT	Grand Junction, CO
Meyer Broadcasting	KFYR	Bismark, ND
	KMOT	Minot, ND
	KUMV	Williston, ND
	KQCD	Dickinson, ND
KXMC-TV, Inc.	KXMC	Minot, ND
	KXMB	Bismark, ND
	KXMD	Williston, ND
	KXMA	Dickinson, ND
Chronicle Broadcasting	KAKE	Wichita, KS
	KUPK	Garden City, KS
Freedom Communications, Inc.	KTVL	Medford, OR
Ambassador Media Corp.	KPVI	Pocatello, ID
Harriscope Broadcasting Corp.	KULR	Billings, MT
	KBAK	Bakersfield, CA
	KTWO	Casper, WY
Stauffer Communications, Inc.	WIBW	Topeka, KS
	KCOY	Santa Maria, CA
	KMIZ	Columbia, MO
	KGWC	Casper, WY
	KGWL	Lander, WY
	KGWR	Rock Springs, WY
	KGWN	Cheyenne, WY
	KSTF	Scottsbluff, NE
	KTVS	Sterling, CO
Holston Valley Broadcasting Corp.	WKPT	Kingsport, TN
	WEVU	Naples, FL

COMPANY	STATION	LOCATION
Alaska Television Network	KATN	Fairbanks, AK
	KJUD	Juneau, AK
	KIMO	Anchorage, AK
WPEC	WPEC	West Palm Beach, FL
KFBB Corp	KFBB	Great Falls, MT
WENY, INC.	WENY	Elmira, NY
	WMGM	Atlantic City, NJ
Youngstown Broadcasting	WYTV	Youngstown, OH
Benekek Broadcasting Corp.	WTAP	Parkersburg, WV
	WBKO	Bowling Green, KY
	KDLH	Duluth, MN
Central Texas Broadcasting Co., Ltd.	KXXV	Waco, TX
Buford Television, Inc.	KLTV	Tyler, TX
	KTRE	Lufkin, TX
Apple Valley Broadcasting, Inc.	KAPP	Yakima, WA
	KVEW	Kennewick, WA
Spokane Television, Inc.	KXLY	Spokane, WA
Lorimar Telepictures Broadcasting Group	KCPM	Chico-Redding, CA
	KMID	Midland-Odessa, TX
	KSPR	Springfield, MO
South Texas Telecasting Co., Inc.	KIII	Corpus Christi, TX
EGF Broadcasting	KESQ	Palm Springs, CA
KAAL-TV, Inc.	KAAL	Austin, MN
WHYN Stations Corp.	WGGB	Springfield, MA
	WGME	Portland, ME
	KGAN	Cedar Rapids, IA
	WICS	Springfield, IL
Kansas Broadcasting Systems, Inc.	KWCH	Wichita, KS

Mr. Kastenmeier. The subcommittee stands adjourned.

[Whereupon, at 12:45 p.m., the subcommittee was adjourned.]

CORNHUSKER PUBLIC POWER DISTRICT

TELEPHONE (402)564-2821 P.O. BOX 9 COLUMBUS, NEBRASKA 68601

Honorable Peter W. Rodino, Jr., Chairman
House Judiciary Committee
U. S. House of Representatives
Washington, D. C. 20515

September 3, 1987

Dear Representative Rodino:

On behalf of consumers of Cornhusker Public Power District, I urge your support for two pieces of legislation that we feel are vitally important to our task for providing reliable, reasonably-priced television programming for the home satellite dishes in our community.

We are a member of the National Rural Telecommunications Coooperative (NRTC). The NRTC is currently the only independent packager of television programming to the satellite dish market. Our goal is to bring packages of satellite programming to the unserved rural consumers with a cooperative, non-profit service orientation at an affordable monthly cost which is truly comparable to cable subscription service.

The NRTC strongly supports the following two bills:

H.R. 1885 - The Satellite Television Fair Marketing Act. This bill has been heard by the House Energy & Commerce Subcommittee on Telecommunications. In testimony, the NRTC outlined the difficulties we are having in gaining access to programming and getting programs which are available at reasonable costs. H. R. 1885 would make cable programming available to satellite dish viewers and would permit programmers to sell their signal themselves. However, if programmers sell to another party, they must make their signal available to others on a non-discriminatory basis.

H. R. 2848 - The Satellite Home Viewer Act. This bill would create a mechanism by which packagers of home satellite programming would make payment to the copyright owners of the programming shown on superstations and networks. This legislation is vitally needed to clarify a cloudy and uncertain area. H. R. 2848 will encourage the packaging of quality satellite programming thereby creating a competitive environment which will benefit all consumers.

We urge you to consponsor and support both of these bills. To cosponsor H. R. 1885, you can phone Kevin Cloud (Rep. Tauzin) at 225-4031. To cosponsor H. R. 2848, you can phone Shannon Foley (House Judiciary) at 225-3956.

Thank you for your support and encouragement of the efforts of the NRTC to bring the benefits of modern satellite technology to rural America.

Sincerely,

Norman L. Hoge
General Manager

pc: Tim Rowan, Dir. Marketing
& Human Services

SERVING IN BOONE, COLFAX, GREELEY, NANCE, PLATTE AND WHEELER COUNTIES

ATTACHMENT TO LETTER ADDRESSED TO HON. PETER W. RODINO, JR.
CHAIRMAN OF HOUSE JUDICIARY COMMITTEE

Please consider our signatures as affirmation of a letter from Norman L. Hoge, General Manager of Cornhusker Public Power District requesting your consideration and support of H.R. 1885 The Satellite Television Fair Marketing Act, and H.R. 2848, The Satellite Home Viewer Copyright Act.

CORNHUSKER
PUBLIC POWER DISTRICT

SIGNED THE 3RD DAY OF SEPTEMBER, 1987, BY CORNHUSKER PPD BOARD OF DIRECTORS:

Paul J Kromer
Raymond A Merrill
Marvin Folken
Marvin E Mueller
Harry Cockerell
Delmer D Clausen
Robert Briese

K-SAT
BROADCASTING INC.

P. O. BOX 1060
GILROY, CA 95021-1060

SPACENET-1 TRANSPONDER 1V44 AUDIO

TELEPHONE 408-848-6538

November 9, 1987

The Honorable Robert W. Kastenmeier
Rayburn Building, Room 2328
Washington D.C. 20515

Dear Representative Kastenmeier,

It has come to my attention that the copyright hearings have been noticed for November 19, 1987. Originally we at K-SAT wished to represent a number of concerns regarding HR2848. If indeed N.S.T.A. will be invited to testify we feel that our additional concerns can be made through personal contact and written testimony. Please advise us as to whether N.S.T.A. has been invited.

Sincerely,

Chuck
V.C.Dawson, President

VCD:jlw

CC: Mike Remington

"THE INFORMATION AND ACTION CHANNEL"

K-SAT
BROADCASTING INC.

P. O. BOX 1069
GILROY, CA 95021-1069

SPACENET

TELEPHONE 408-848-5558

November 3, 1987

Dear Representative

We at K-SAT representing large numbers of dish owners and cable subscribers in your district have sent K-SAT representatives to meet with you and discuss S889/HR2848 and the copyright legislation pending.

Please meet with them and allow them to review the materials pertinent to the legislation as you would with your constituents who they represent. Upon their return they will report back to your constituents via our nightly radio program.

Thank you for your courtesy on this important matter.

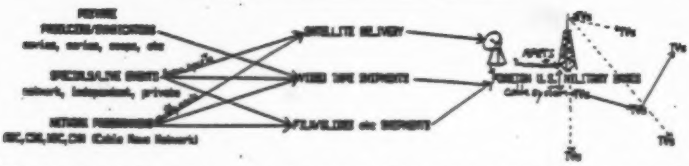
Sincerely,

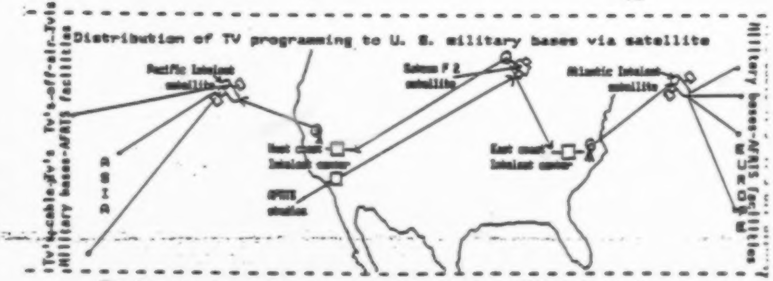
V.C.Dawson, President

"THE INFORMATION AND ACTION CHANNEL"

AFRTS FLOW CHARTS

Program distribution sources and methods


SATELLITE DELIVERY
VIDEO TAPE SHIPMENTS
FILM/SLIDES etc SHIPMENTS
network, independent, private
(ABC,CBS,NBC,CNN (Cable News Network)
AFRTS
FOREIGN U.S. MILITARY BASES
Cable System
TVs
TVs
TVs
TVs
TVs


Distribution of TV programming to U. S. military bases via satellite
Pacific Intelsat satellite
Satcom F 2 satellite
Atlantic Intelsat satellite
East coast Intelsat center
AFRTS studios
Military bases-AFRTS facilities

The top chart shows how programming flows to AFRTS facilities around the world before it is transmitted over-the-air or on cable. The first column shows various sources and kinds of programs. The middle column displays different ways programming is moved from its source to its destination. The right side portrays AFRTS facilities and ultimately the TVs that servicemen and women use to watch news, entertainment, etc.

The lower chart graphically depicts how satellite delivered programs are sent to Satcom F 2, a US satellite located over the eastern part of our country, from the west coast studio facilities. East and west coasts Intelsat downlink/uplink facilities receive the F 2 signal, change it from NTSC to another standard and transmit it up to the Atlantic and Pacific Intelsat satellites. Military bases around the world pick up one of the two Intelsat signals, combine the satellite delivered programs with others delivered on video tape, film etc., and then send the combined programming to serviceperson's televisions via over-the-air and/or cable. How signals get to military base(s) has NOTHING to do with how programming gets to individual television sets from the AFRTS facility at each base!

K-SAT
BROADCASTING INC.

P. O. BOX [illegible]
GILROY, CA [illegible]

TEL[illegible]ONE [illegible]

Date: October 12, 1987

To: The Honorable Mike Synar
Rayburn Building, Room 2441
Washington, DC 20515

Open Letter

Dear Representative Synar,

Thank you for this opportunity to address the "superchannel" issue. As a basis to the viewpoint of K-SAT you should understand that our first responsibility is to encourage the use of satellite carriage of long distance signals both in the clear and scrambled. As you know Congress has in the past set very liberal ground rules in legislation to encourage the cable industries use of satellite when cable was a new and struggling technology. You have in the past referred to K-SAT as those who believe there is a cable conspiracy. I would like to point out that our fear is that the home dish industry as a new struggling technology may not be considered to receive the same legislative incentives and liberal ground rules as other technologies such as cable has.

It is in the above perspective that HR-2848 seems void of home dish incentives. I therefore submit eight (8) points of refinement concerning HR-2848. It is our belief at K-SAT that these provisions would cause the use of satellite delivered signals to prosper and at the same time insure a level playing field for entry into this new growing market.

1: First let us consider the most fair methods for the establishment of copyright fees. Parity with cable viewers is what we request. Certainly a home owner with both cable and satellite TV should not be expected to pay a higher tariff for owning a dish. In this way should the courts, FCC or Congress change current conditions parity can be maintained.

2: As for the tendency for program suppliers to charge dish owners more for the same product than to cable subscribers once again we believe in parity.

3: As far as placing limits that would serve to inflict a cartel of services that launched prior to June of '87, we once again say lets open the field. As long as proper fees will be paid why not have competition and at the same time growth for the home satellite industry.

4: With regard to ten (10) percent cable penetration such formula would predicate all business plans to cable plans not home dish. It also serves to note that if that same formula were imposed today the majority of services carrying broadcasts to the home market (Netlink, SBN) would not qualify to do so. Such a formula is obsolete from it's inception and only serves to regulate growth of one industry (home dish) to that of another (cable).

5: Currently there is no insurance that non-discriminatory marketing provisions outside of cable affiliation will take place. The same industry observations that developed the need for the marketing provisions in HR-1885 are needed for long distance carriers if they are to in effect serve the role of program providers to the home dish industry.

6: If parity of copyright payment exist there is no need to sunset such provisions. When copyright fees change for one they should change for all.

7: You must grant that the original role of the so-called "passive" common carrier has evolved to (as Congressman Don Edwards put it), "a more active" status. No longer does a WTBS or WGN remain "non-involved" in the fact that they are carried to cable and home dish. Further those tariffs filed almost ten years ago by "passive" carriers such as United Video and Southern Satellite now Tempo, have evolved with the satellite delivery technology into a much more active state. There exist a need to clarify under statute that any licensed broadcaster may enter this active program provider status. Only with this clear open door statement can it be announced that competition is to prevail in the carriage of broadcast signals via satellite.

8: Finally, in the spirit of the First Amendment and the free flow of information via the public airways, it is important the guaranteed access to all long distance signals using satellite be assured. It is always with regret and sense of outrage that we at K-SAT have observed the withdrawal of some signals (Netlink, a cable backed provider as agreed with NBC not to serve some dish owners) from some segments of the taxpaying and copyright paying public. This type of concerted refusal to deal along with combined restraint among competitors can not be tolerated if there is to be competitive market conditions and consumer protection.

I hope that you can respond to the concerns of K-SAT at your earliest convenience. As for your comments directed at K-SAT in Nashville; a small broadcast group...in opposition...for their own private gain. While K-SAT may be small group in your eyes, our points on HR-2848 are large in scope. As far as personal gain I feel you have been misled. We advocate a totally competitive market. Once again I wish to thank you and Representative Kastenmeier for undertaking a difficult and complex task for that is the bench mark of leadership. I only wish that K-SAT had been involved in the formulation stages. Possibly then we could have found ourself in support of HR-2848. With the requested amendments we can support and work for the success of a fair copyright bill.

Sincerely,

V.C. Dawson, President

VCD:jlw

CC: Rep. Kastenmeier
Distribution

SUBMITTED BY [illegible]

WHY S. 889 IS GOOD POLICY

Showtime, which is owned by Viacom International, Inc., a multiple system cable television operator, we are advised has circulated a document on Capitol Hill entitled "Why S. 889 is Bad Policy." This document is inaccurate and misleading. Each of Showtime's points are addressed.

Showtime argues that passage of the distribution provisions of S. 889 would hurt dish consumers. These provisions state that if satellite programmers choose to market their programming to dish owners through third parties, they must establish reasonable financial and character criteria under which multiple parties have the ability to qualify as distributors.

This would not eliminate program packages. On the contrary, it would provide for meaningful competition in the delivery of program packages. Rather than forcing programming services to withdraw their authorizations, passage of S. 889 would ensure that multiple entities would be able to retail these packages to the consumer. Multiple program packagers would be able to purchase programming at wholesale for sale at retail in competition with one another.

This is not the situation today. Showtime and HBO are the only universally available, reasonably complete packages. Both are owned in common with major cable television operators and the prices they charge to dish owners are controlled by the cable industry. Because of this, neither has a real incentive to aggressively market its service to dish owners. The services of neither of these companies is available in the package of the other.

Nor would passage of this bill "Baulkenize" the programming sales business "so as to make it worthwhile to virtually no major distributors". The facts speak otherwise. The Amway Corporation, a $2.4 billion company, along with the NRTC, are both seeking to be distributors and are both urging passage of S. 889. These major companies have great experience in retail sales and service to consumers and have testified in strong support of the legislation.

The argument that the distribution provisions of S. 889 would hurt consumers is similarly frivolous. The bill does not require a "legislatively dictated distribution system". It merely seeks to ensure that if sale to the dish owner is made through a third party (cable system) that others similarly qualified cannot be shut out. The legislation leaves up to each service the establishment of reasonable criteria.

It is cable television operators that have been successful in convincing Congress to pass a "legislatively dictated" distribution system by which broadcast product is available to cable companies and their subscribers at rates dictated by the Congress and the Copyright Tribunal. This is called the cable television "compulsory license". Similarly, telephone companies and power utilities must provide pole attachments to cable television companies at legislatively dictated rates. Cable operators convinced Congress that it and the FCC should dictate pole attachment rates.

S. 889 does not go that far. It merely establishes a limited requirement that if the programmer has determined to establish criteria for the distribution of programming through a third party, it cannot discriminate among equally qualified third-parties. Neither the Congress nor the FCC is asked to rate regulate. This limited requirement is necessitated by the cable television industry itself because of the pressure which it has placed on satellite programmers not to deal or to deal at inflated rates with would-be third-party (independent-of-cable) packagers.

It is nothing short of absurd to suggest as the Showtime piece does that "cable remains substantially regulated on the local level". While many cable companies pay franchise fees, these fees are for the privilege of using the streets and ways of the community. The business of cable television was deregulated by Congress in 1984. In nearly all markets, cable rates and terms of service are deregulated. In fact, cable operators are trying to prevent local communities from regulating any aspect of their business including those very few areas permitted by the 1984 Cable Act. They have been successful in several recent court cases in California.

Cable was deregulated based on the premise that the video marketplace was emerging such that cable would have many competitors. Cable is rigorously fighting to prevent future competition from telephone companies. Today, there is only one competitor to cable for the consumer who wishes to view multiple sources of over-the-air non-broadcast programming in the home. That competitor is direct satellite reception. That competitor is being squeezed out of the market by the control which the major cable television companies have over the major satellite programmers. In nearly all cases, there are either one and the same company or subservient to the cable company because the cable company is the sole purchaser of the programmer's product.

The cable industry, through Showtime, next argues that only if cable is allowed to invest heavily in new programming will it be able to compete against other distribution technologies. Congress is told:

> S. 889 would force cable programmers to sell that new programming under a federally established regime controlling rates, terms and conditions whether or not it made economic sense for the programmer.

The legislation says nothing about Congress establishing rates, terms and conditions. Again, the only law touching cable television and mandating rates, terms and conditions is the Copyright Act of 1976 and the Pole Attachment Act cable television operators are able to access programming and facilities at federally controlled rates. S. 889 does not do this. It allows the individual programmer to set its own reasonable rates, terms and conditions.

Nor will passage of the bill prevent investment in new programming. In fact, the opposite is likely to occur. Programmers will be more likely to invest knowing that a new market (dish owners) is there to be served and the cable monopoly can no longer control their service to that market.

Finally, nothing in the legislation prevents programmers which have not scrambled from scrambling and making use of the VideoCipher II or any other technology. Nothing prevents the FCC from adopting the VideoCipher II, if it finds that it is the appropriate standard. The legislation merely provides for a limited regulatory role caused by the fact that the control of the scrambling hardware, has been, is now, and will likely remain, in the hands of one company. Through its control of the chips, which are necessary for the scramblers and descramblers, General Instruments has a monopoly over the hardware of encoding and decoding equipment. The legislation provides for a limited government role in the establishment of standards. This is oversight required because the existing monopoly over harware has resulted in inflated prices and periodic shortages.

K-SAT
BROADCASTING
P.O. BOX [illegible]
GILROY, CA [illegible]

V.C. DAWSON
President

Business Office 408 848 5558
Facsimile Machine 408 848 5571
Bulletin Board 408 848 6915

To the Honorable Members of the United States Congress:

General Instruments corporation currently has an ABSOLUTE MONOPOLY on the manufacturing, distribution, pricing, computer control, and repair of the Videocipher II decoder. Manufacturers, distributors, dealers, and consumers are being GOUGED on the entire operation of this system. The decoder is grossly over-priced, in many cases costing as much as half the price of an an entire satellite TV system. At the present time, only GI and Channel Master build the "module" which plugs in to either the stand-alone decoder or the Integrated Receiver/Descrambler (IRD). However, virtually all modules manufactured by Channel Master are bought back by GI, making GI again the sole source. GI recently announced that they had licensed Houston Tracker Corporation to build the stand-alone descrambler. In fact, all they are doing is putting Houston Tracker's name and logo on the stand-alone descrambler built by GI, meaning that there is not now, and never will be any competition on this product without Congressional intervention. In addition, GI has testified that the entire VC-II is built in the U.S. and Puerto Rico. However, I have examined the "module" board on my personal VC-II and found that is is plainly marked "MADE IN TAIWAN   R.O.C."

Since GI is the sole source of supply, there is consequently, absolutely NO competition on pricing. Other manufacturers who have come forward and requested permission to build the entire unit or the module itself have been turned away empty handed. GI owns the patents on certain software components on the "module" board, and they have absolutely no intention of letting anyone else build this board. Last year, at hearings in Congress, GI stated that the price of the VC-II would drop sharply. Now one year later, the current dealer WHOLESALE price ranges from $360 to $430 (if he can even find one to buy). Compare that with the average RETAIL price of one year ago: $395! We can only assume that the price will get worse, and not better as long as GI is permitted to have their monopoly. Obviously, standardized encryption would create competitive pricing.

GI also has an absolute monopoly on the computer control center for handling all Videocipher II units in use today. This gives them the power to override any and all inputs from the programmers including turning off programmer's paying customers whenever they feel like it. GI's Vice-President, Larry Dunham has admitted in oral and written testimony that they have turned off over 12,000 decoders. He claims that these were all "illegal" units. However, he has yet to publicly show any evidence against each of these 12,000 customers, or any court order authorizing them to turn those customer's off. The FACT is that with very few exceptions, GI has NO legally supportable evidence, and NO court orders to take this action. By use of the power that their absolute monopoly gives them, they are able to override anything that the programmers are able to do to control their own customers. There ARE alternative means of controlling the system which could be developed if standardized encryption were to become a reality.

GI's repair center is the only authorized repair center anywhere for the VC-II. When a customer sends a unit in for repair, he cannot get competitive pricing on repairs any more than he can on purchasing the decoder. As a result, GI normally charges flat rate of $295.00 for any non-warranty repair. Furthermore, the customer cannot get any "second opinion" or other bids on his repairs. The customer is again TOTALLY at the mercy of GI's absolute monopoly. Compare this with the normal policy of a company doing business in a competitive environment. In that case, the customer would only be charged for actual parts and labor used, and not GOUGED for a price almost equal to the original purchase price of the decoder. And, if the customer was not satified with the repair estimate given at one company he would be free to take his repair business elsewhere. Consider one common repair: The VC-II module software is sustained by use of a small lithium battery. When this battery goes bad, vital ID data will be lost. If the module is out of warranty, GI will then charge $295.00 for a repair that consists of replacing a $2.00 battery and re-programming the ID data (which probably takes less than 1 minute). Here again, it becomes readily apparent that standardization by congressional mandate is the only solution.

The claims by GI and others that the standardization portion of S-889 would hamper further innovation in this technology is absolutely unfounded! In the 1940's, RCA developed the television as we know it today. Their invention was licensed to other manufacturers. As a result we have had numerous innovations and improvements in the television system. However, that same television that RCA developed in the 1940's will still work on the television broadcasts signals used today. The same could be said for the Video Cassette Recorders (VCR) which we have today. If only one manufacturer had been permitted to build this product, we would still have bare-bones, no-frills basic VCR's selling for $1500.00. However, as a result of standardization and multiple licensing, one can readily purchase a VCR with infinitely better picture quality and more features for $200.00. These advancements can ONLY take place though, with competition, and competition on decoders can only come about with standardization. However, it needs to be clarified that standardization would apply ONLY to the encryption/decryption technique, and not to the actual physical hardware. This will leave the door open for other manufacturers to explore new methods of achieving the same result.

The Federal Communications Commission, has the resources to evaluate the encryption problem and determine the appropriate standard. It is imperative that a standard be adopted. Despite claims to the contrary, there are at least SEVEN other encryption methods IN USE on satellite TV in this country TODAY! Standardization would guarantee that consumers would not be faced with the problem of having to purchase multiple decoders in order to receive various channels.

PLEASE HELP US KEEP THE STANDARDIZED ENCRYPTION PORTION OF S-889 COMPLETELY INTACT. Please feel free to contact me if you have any questions about the Videocipher and GI's handling of it.

Respectfully,

Clyde Wayne Ellis

Clyde Wayne Ellis
K-Sat Videocipher
Issue Coordinator

CableVision
of Central Florida
A Division of American Television & Communications Corporation
A TIME INC. COMPANY

T. J. HARVILLE
Vice President of Operations/Coastal

September 30, 1987

John Link
1081 Aron Street
Port St. John, FL 32922

Dear Mr. Link:

It seems we are unsuccessful in talking with each other by phone.

CableVision of Central Florida sells it's videocypher decoders for $795.00 plus sales tax, and has done so for nearly six months. This is the price that I've chosen to sell the unit for based on it's reliability (or lack of) as it can be defeated by those electronically skilled.

We hope to receive a shipment of the new state-of-the-art decoder in the near future. As we currently do not have them, we would be happy to assist you in finding a new decoder for the current competitive price.

I hope this information is of assistance to you.

Sincerely,

T.J. Harville

T.J. Harville

TJH/blb

PROVIDING ENTERTAINMENT AND INFORMATION SERVICES IN BREVARD, ORANGE, OSCEOLA, SEMINOLE AND VOLUSIA COUNTIES
In Brevard County: 720 Magnolia Ave. • Melbourne, FL 32935 • (305) 254-3300

Perhaps the worst offender is a system whose very design requires a dependable battery supply to operate. General Instrument's VideoCipher II satellite descrambling system spotlights the hidden cost of ownership that can occur when design engineers gloss over their use of lithium power. The VC II is unusual in that it depends upon the battery-backed data integrity of its CMOS RAM and TI CMOS 7000 series microprocessor. The CMOS code keys are tied to parallel codes in GI's own computer. So, unless these keys match your electronic ID number, the box is unrecognizable to the system.

The unit has no on-off feature, but seems to draw over 20 W, gauging by how my cat wants to curl up to it on snowy nights. Whenever the system is powered up, the battery is being relieved of its CMOS support task by the VC II's internal power supply.

When the VC II battery goes...that's it. The microprocessor stops processing, the RAM (and its hidden code keys) go bye-bye. Critics of the problem refer to these boxes as "brain dead." Incredible oversight.

Now, GI has a 90-day warranty on the VC II. And out-of-warranty repair sets owners back about $200--half the price of a new unit. The instructions make no mention of the surprise awaiting owners whose units may have lain unpowered, in inventory, for half their two-to-three year estimated unpowered shelf life.

At least one enterprising engineer has advertised that for $79, he will crack the VC II's sealed case (a violation of GI's warranty, incidentally) and replace the aging lithium cell with a new, larger-capacity one. He'll also monitor the RAM keys that are in the box so that if it ever does lose power and die, there is some hope of resuscitating it. Those keys, like DNA, can be re-inserted by enterprising hackers.

Electronics Engineering Times 92887
"Lithium Is Losing Its Luster"

1100 CLEARVIEW DRIVE
ALLEN, TEXAS 75002
OCTOBER 1, 1987

THE HONORABLE SENATOR J. JAMES EXON
ROOM 330
HART BUILDING
WASHINGTON, DC 20510

Dear Senator Exon,

This letter is in response to a question which you addressed to Mr. Larry Dunham at the recent hearings on S-889. You asked Mr. Dunham where the Videocipher II descrambler is manufactured.

I hereby state that I have examined my personal Videocipher II descrambler and found that the main circuit board (GI assembly part number 11627 ASSY 28049-2) is clearly silk-screened with markings:

"MADE IN TAIWAN R.O.C."

Sincerely
Clyde Wayne Ellis
Clyde Wayne Ellis
K-Sat National Coordinator
for Issues Relating to
the Videocipher and General
Instruments

I hereby certify that on this date Oct 1, 1987. Clyde Wayne Ellis

appeared in person before me and affirmed th[illegible]all statements contained herein

are true and correct.

Notary: Shirley S. O'Kelley
Date: Oct 1, 1987
Commission Expires: 9-9-89
State: TX

Section 4: Availability of Network Programming to Rural Areas

It is imperative that this network section remain as part of this bill since the networks must be held accountable because they exist in the public interest, are paid for by our advertising dollars, are using our public airwaves to reap healthy profits, and best exemplify our First Amendment rights.

However, when this bill goes to markup, we ask that the wording in this section be revised so that the networks are required to leave their prime-time, fronthaul feeds -- intact with national advertising -- in the clear, while allowing them to scramble their raw feeds or backhauls. This would then remove the responsibility for a solution from an FCC who has exhibited absolutely no concern for the plight of Americans in the so-called "white areas." In fact, this same FCC, in harmony with the networks, has been touting translators as the only solution. But we know by now that translators will never be the solution. An informal affiliate survey done late last year (and submitted to the FCC) revealed that most affiliates have absolutely no plans whatsoever to install translators, deeming them to be unreliable, too costly, and an obsolete technology. This whole translator issue has been used by the FCC and the networks as a smokescreen to pacify concerned legislators while they (the networks) proceeded with their scrambling plans. Therefore, by allowing the FCC to handle the network issue, translators might still be forced upon us as a regressive solution. With the efficiency and effectiveness of satellite technology now available to all Americans, why should the networks be allowed to enjoy this amazing new technology themselves while denying Americans in "white areas" that same opportunity?

The networks have been unable to come up with any hard evidence to show that their affiliates are in danger of being bypassed. To the contrary. Surveys have confirmed that though dishes have been in place for several years now, affiliate ratings have risen while national network ratings have declined. The networks state they want privacy, yet they left the privacy of landlines to go up onto our public airwaves to reap healthy profits. The networks state they are a private business, yet they manufacture a product called news and entertainment designed for distribution to the general public. But what other business in America manufactures a product for the general public, then excludes a segment of that public from having it because of where they live?

Because network scrambling is a violation of our First Amendment rights, and because their actions are callous and discriminatory, it is of extreme importance that the network issue be retained in this bill.

K-SAT
BROADCASTING
SPACENET

P. O. BOX 1069
GILROY, CA 95021-1069

TELEPHONE 408-848-5558

UOTES FROM SENATE REPORT 222, THE LEGISLATIVE HISTORY AND INTRODUCTION TO ENATE BILL S. 1160, WHICH WAS SIGNED INTO LAW AS THE PUBLIC BROADCASTING ACT F 1967:

The activities of PBS (Section 396b, Subparagraph C) conducts itself in a anner that will most effectively assure maximum freedom of non-commercial adio and television broadcast stations from interference with or control over he programming content or other activities." (ie., The purpose of PBS is NOT o be a private network, but a PUBLIC network, and that all monies given to it the U.S. Government is to ensure that the programming content of the ENTIRE roadcast, either via radio or TV, is not interfered with in any way, and that o controls are exercised over it.)

The airwaves themselves, over which programs are broadcast, ARE PUBLIC ROPERTY, and the purpose of PBS is to assist in providing the broadcast acilities necessary to carry educational radio and television programs TO AS ANY OF THE CITIZENS OF THIS COUNTRY AS POSSIBLE."

NACTED IN 1977, HOUSE RESOLUTION H.R. 9620 GAVE PBS A TOTAL OF $1.041 BILLION OF TAXPAYER MONEY TO USE THE PUBLIC AIRWAVES! QUOTES FROM THAT BILL:

"Public Broadcasting is for ALL Americans."

"The money will be used, among other purposes, to plan the best use of the ublic Broadcasting Satellite System, to extend the reach of public television nd radio signals to all taxpayers, for ALL taxpayers contribute to public roadcasting."

EMARKS FROM THE 1967 SENATE CONGRESSIONAL RECORD, REGARDING THE PUBLIC ROADCASTING ACT OF 1967 (CONTRIBUTED BY GLORIA BARNETT):

---

r. Proxmire: "We are also aware that", as Herbert Hoover asserted 40 years go, "the public owns the airwaves, and that the Federal Government is the only gency which can act in this interstate area, to make certain that the airwaves re used in the public interest."

THE INFORMATION AND ACTION CHANNEL™

K-SAT
BROADCASTING
SPACENET

P. O. BOX 1069
GILROY, CA 95021-1069
TELEPHONE 408-848-5558

Upon signing the Public Broadcasting Act of 1967, President Lyndon B. Johnson remarked, "So today we re-dedicate a part of the airwaves, which belongs to all of the people, and we dedicate them for the enlightenment of all the people. I believe the time has come to stake another claim in the name of all the people. -- Stake a claim based on the combined resource of communications. I believe the time has come to enlist the computer and the satellite, as well as television and radio, and to enlist them in the cause of education."

IN LIGHT OF THESE LAWS, K-SAT'S POLICY REGARDING PBS IS AS FOLLOWS:

1) insomuch as the public has paid 50% of the development and the continuing costs of the Public Broadcasting Service (PBS), and:

2) Insomuch as PBS has used those funds to purchase equipment and implement scrambling of some signals they carry, and:

3) Insomuch as a condition of PBS' funding was to make its signals available to ALL U.S. citizens, and:

4) Insomuch as PBS has stated that its signals are not to be received by citizens directly with home satellite dish equipment:

We, at K-SAT, call for ALL citizens to demand the following immediately:

1) PBS abandon its signal scrambling equipment and acknowledge the right of all U.S. citizens to receive the PBS signal REGARDLESS of the method of over-the-air delivery of the system, or:

2) Should PBS choose NOT to acquiesce their legal position and operate within the intention of the laws from which they gained their funding, then:

a) We demand that PBS remove itself from all public funding, and reimburse the U.S. Government for all monies used and profited, for scrambling, and:

b) That they also forfeit the last five years of public funding which led to the development of PBS and its actions as a 4th network, and NOT as public broadcasting.

c) Furthermore, those forfeited monies are to be allocated immediately for the establishment of a true satellite-delivered public television station that DOES comply with the objectives of the Public Broadcasting Acts of 1967 and 1977, and which will be available in the clear to all citizens and taxpayers.

"THE INFORMATION AND ACTION CHANNEL"

Why Would PBS Oppose S. 889 & H.R. 1885?

The United States Congress mandated in the Public Broadcasting Act of 1967 that:

> "The Public Broadcasting Act of 1967 seeks to strengthen non-commercial broadcasting so that the airwaves can be put to use for the public benefit."
>
> "The airwaves themselves over which programs are broadcast are public property. .... The intent of S. 1160, the Public Broadcasting Act of 1967 is to improve the facilities and program quality of the Nation's educational broadcasting stations so that this National resource may be used to its fullest for the betterment of individual and community life."
>
> "(5) that it is necessary and appropriate for the Federal government to complement, assist, and support a national policy that will most effectively make noncommercial educational radio and television service available to all U.S. citizens;..."

These clear unequivocal mandates **REMAIN IN FORCE!** **BUT**, PBS has purchased and will be sending to each member station encryption (scrambling) equipment under the guise of technological growth, i.e. digital stereo sound! PBS also chartered a commercial for profit wholly owned subsidiary, PBS Enterprises, Inc. PBS is restricting **NOT EXPANDING** access and PBS is operating a **COMMERCIAL** for profit business in CLEAR VIOLATION of the Public Broacasting Act of 1967!

I quote from PBS's Broadcast Operations & Engineering cover letter dated July 22, 1987 signed by Mark S. Richer, Dir. of Engineering;

> "Since January of 1985, PBS Engineering has been investigating alternative methods of delivering stereo to its member stations....Based upon these tests, PBS and the PBS Engineering Committee recommended the General Instruments VideoCipher-II system."

I also quote PBS's Engineering Technical Memo, TM# 87-04 dated June'87;

> "Thus, when the system is fully implemented, all PBS member stations must be equipped with VC-II descramblers in order to receive PBS transmissions."
>
> "The system consists of a VideCipher-II scrambler and Management Computer located at the" (each of 5) "satellite uplink and one or more VideoCipher-II descramblers located at each TVRO (Television Receive Only) earth station downlink." (affiliate stations =317 - member licensees =182)

S. 889 and H.R. 1885 states, "(c)(1) No person shall encrypt or continue to encrypt satellite delivered Public Broadcasting Service programming intended for public viewing by retransmission by television broadcast stations."

This section should be reworded to read, "...satellite delivered Public Broadcasting programming intended for viewing and/or use."

This revision assures unrestricted availability of PBS's signal(s) regardless of method of distribution and/or reception!

Respectfully submitted,

Ms. Robin Adair Jamestown Route Box 156 Columbia, KY 42728

K-SAT
BROADCASTING INC.

P. O. BOX 1069
GILROY, CA 95021-1069

Spacenet

TELEPHONE 408-848-5558

K-SAT AFRTS POLICY

As I have told you in the past, AFRTS plans to scramble its television programming feeds in the future. AFRTS officials tell us the reason they must scramble is because certain of their programers have asked them to do so. They immediately agreed to comply with the programmers request at considerable expence to the taxpayer.

I suggest that there is a lot more to the AFRTS decision to scramble than meets the eye. There are serious constitutional and legal issues involved here of which you and your congressional delegation should be aware.

The United States Defense officials should be able to keep national defense information secret. Indeed, they have legal authority and responsibility to do so. However, non-defense information is another matter. Our constitution and such laws as the Freedom of Information Act and various sunshine laws to cover were established for the purpose of keeping the public fully informed of the operations of the Government. The Defense Department unfortunately has often subverted such freedom of information laws to cover up mistakes and other wrong doing. For example, the Department of Defense excluded the press from the Granada Operation about 3 years ago. They now want to keep the public from knowing what they are putting on the AFRTS network. With the contents of this important channel of information to military personnel hidden from the public, Defense officials could use this resource to indoctrinate these personnel with various ideas. They might even be able to use this communications channel to help them consolidate military power against the government. We should not allow Defense officials to conceal the contents of this communications channel from the public.

Many of you are probably thinking that this is far fetched and that you have complete trust in our Defense officials. Well, I can demonstrate that your trust is misplaced in the present operations of AFRTS. The Defense Department has regulations that prohibit the Department or its officials from endorsing commercial products. In other words, Defense officials are prohibited from going on radio or television and endorsing a commercial product or assisting in the advertising of such product. However, in violation of this Defense Department policy, AFRTS broadcasts the CNN commercial feed several hours each day. The commercials are not removed from this feed as they are from NFL football games and network programming. Guess who is the leading advertiser on CNN during the time period AFRTS uses taxpayer money to convence military personnel to buy these products? It is Time Life Books and Time Incorporated. So you and I and every other taxpayer is subsidising Time-Life and CNN. In fairness, I should tell you that after several hours of CNN advertising, at the end of the program, an AFRTS announcer states that the Department of Defense does not endorse any of these commercial products. Do you think this announcement actually cancels out the unfair advantage that these advertisers have gained from all this exposure. Of course it doesn't. Its like telling a jury to forget what they just heard.

It seems to me that the Government should not give one advertiser an advantage over others. If AFRTS is going to use some commercial feeds, it should use them all. Why do you suppose that the advertisers on CNN are favored when those of NBC are not. Why do you suppose that AFRTS wants to protect these commercials from public view by scrambling this feed at taxpayer expense? Could it be that someone is getting some kick backs? You may think that military officers are incorruptible! Consider the case of Admiral Hyman Rickover. For several years he presented demands to General Dynamics Corporation (a Defense Contractor) for gratuities which were paid for by taxpayer money. He got a slap on the wrist when it became public that this scam was going on. Now I ask you, what do you suppose that CNN and Time-Life are doing for the AFRTS officials? What ever it is, it is enough to make them want to scramble the feed so they can continue to do it.

(OVER)

If you feel as I do that this AFRTS activity is improper, you should write each member of your congressional delegation and demand that he request an investigation by the General Accounting Office (GAO) into the operations of AFRTS. You should also request AFRTS delay any scrambling plans until the investigation is complete (which should take about one year.) Specifically GAO should be asked to determine whether Defense officials can legally provide free advertising to commercial companies on this taxpayer supported network. Also GAO should be asked to determine whether any AFRTS official has personally benefited from the decision to air these commercials. Finally, GAO should be asked to provide a legal opinion on whether the Department of Defense has the authority to scramble the AFRTS program feeds so as to conceal from the public the non-national defense operations of a Government Department.

In addition to requesting the GAO investigation of AFRTS, we should continue to urge the members of our congressional delegations to include the appropriation restriction in the Defense Appropriations Act against the expenditure of public funds for scrambling AFRTS programming feeds.

Chuck Dawson
K-SAT Radio

THE AMERICAN LEGION
CHAMPLIN POST #600
CHAMPLIN, MINNESOTA 55316

Senator Rudy Boschwitz
506 Senate Hart Office Bldg.
Washington, D. C. 20510

Dear Senator

Our organization has been following the sequence of events that have been taking place over the last couple of years concerning Satellite T.V. Presently there our some bills in committee that we feel need your immediate attention.

S 889, introduced by Albert Gore, and its sister bill HR 1885, introduced by Billie Tozan, prohibit the scrambling of AFRTS and PBS. These programs are paid for with our tax dollars. Our servicemen and the general public would be deprieved of what is rightfully thiers,if these programs are allowed to be scrambled.

As a representative of the American People we feel it is your sworn duty to support and uphold the Constitution of The United States. The scrambling of either of these services would be a direct violation of the First Amendment.

PLEASE CO SPONSOR S 889.

Another bill HR 2848 has been introduced by Sinar. If you haven't read this bill study it carefully. It has some very good points in it. However there is a definate need for this bill to be amended. If passed as is it would give the cable companies complete control of all programming available on Satellite. It would also have the satellite dish owners paying at least double that of cable customers. We feel this would be very unfair to our country cousins that do not have cable available to them.

PLEASE VOTE AGAINST HR 2848 UNLESS IT IS AMENDED TO CORRECT THE PROBLEMS MENTIONED.

Thank You

Arnold S Gay

Arnold Gay
Commander

AFRTS Scrambles the FACTS to Fight S. 889 and H.R. 1885

Jordon E. Rizer, Director of DOD American Forces Information Service, stated in a letter dated March 26, 1987 that,

> "The Congress and the Department of Defense (DoD) has charged AFRTS with the mission of providing U.S. military commanders with a means of communicating important information to DoD personnel and their familes outside the continental United States. ... All of the television entertainment programs we offer such as "Magnum P.I.", "The Cosby Show", and "Cheers" are provided to our stations overseas on videotape. ...Our program suppliers place upon us the requirement that we limit the distribution of those programs to only DoD personnel overseas. ...By ensuring that pirates in foreign countries cannot steal programming from our satellites and use it without payment to the program owners, we protect our own continued use of the programming. ...In general, AFRTS would scramble only the satellite signals, not the retransmission of programs from our stations over seas. ...To further prevent the unauthorized reception of our signal, AFRTS uses very low-power transmitters and highly directional antennas pointed directly at U.S. military installations."

An article in The Florida Times Union June 19,1987 sec. A pg. 17 states,

> "Sigur said that in South Korea the United States has its own broadcast frequencies that can be picked up by the Korea public. ...The network has barred the television show M*A*S*H, a comedy based on an Army field hospital unit during the Korean War."

Mr. Rizer also stated in his March 26, 1987 letter,

> "The sales department at Turner Broadcasting System (TBS) was quite distressed to find that many hotels were already carrying these programs on in-house cable systems. They were obtaining them from AFRTS feeds on SATNET and TBS wasn't making a dime. The people at Turner have made it clear if we wanted to continue to obtain their programs for our audience overseas, we had to take actions to prevent piracy."

An article in the September 1987 OAG FREQUENT FLYER discusses TBS' CNN distribution by AFRTS which CONTRADICTS Mr. Rizer's claims. Pg 67 & 69

> "But such a prodigious effort was unnecessary; thanks to ...(AFRTS), CNN was already there. ...Those who help themselves to CNN without so much as a "by your leave" are not thieves; rather, in the eyes of CNN's owner, they are accepting promotional material....a subtle way of winning friends-and hooking them."

Testimony submitted to the Senate Subcommittee on Communications regarding the July 31, 1987 hearing states,

> "...AFRTS transmits on VHF TV Ch 8 on the island of Okinawa Japan with 40,000 watts of power. AFRTS uses sixteen (16) transmitters in South Korea! ...in West Germany; Wiesbaden Ch 22- 1,000 W, Neighenburg on Ch 57-1,500W, Berlin 2,000W, Keisersalturan Ch 30-3,000W, and in Bitburg on Ch 27 using an 8,000W transmitter. Three transmitters operate at the U.S. legal MAXIMUM, one below, one EIGHT times over, another 4,000 times above the U.S. limit, and the balance EXCEED these limits. "VERY LOW-POWER INDEED!"."

AFRTS' TV transmissions can be viewed by anyone with a multi standard TV. AFRTS-DOD knows their signal(s) do not stop at the base perimeter. Since program owners and syndicators DO NOT OBJECT to their material being available over-the-air in foreign countries, both S. 889 and H.R. 1885 should be strengthened by rewording so they mandate,

> "No person shall encrypt or continue to encrypt satellite delivered AFRTS programming made available to viewers in foreign countries."

Repsectfully submitted,

Ms. Robin Adair

JIM OLIN
6TH DISTRICT VIRGINIA

WASHINGTON OFFICE
1338 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5431

COMMITTEES
AGRICULTURE
SMALL BUSINESS

Congreſs of the United States
House of Representatives
Washington, DC 20515

DISTRICT OFFICES
406 FIRST STREET, ROOM 700
ROANOKE, VA 24011
(703) 982-4672

825 MAIN STREET, 3D FLOOR
LYNCHBURG, VA 24504
(804) 845-8646

12 W. BEVERLEY STREET, 3D FLOOR
STAUNTON, VA 24401
(703) 885-6178

SUITE 808
SOVRAN BANK BLDG
COURT SQUARE
HARRISONBURG, VA 22801
(703) 433-0433

November 20, 1987

Congressman Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil
Liberties & the Admin. of Justice
2137 Rayburn HOB
Washingtion, D.C. 20515

Dear Bob:

I am writing in support of H.R. 2848, the Satellite Home Viewer Copyright Act of 1987. This bill will help end the isolation of many of my constituents, and I urge the subcommittee to take prompt action on the measure.

I represent a mountainous district with a large rural population. Many of my constituents cannot receive television transmissions because they live far from cities. Others live in small valleys where TV signals are blocked by mountains. For these individuals, satellite dishes offer the only means of getting TV.

In order to receive the same informational and entertainment programming which urban dwellers take for granted, many of my rural constituents invested in home satellite dishes. With the advent of scrambling, these constituents again face a loss of programming.

Dish owners are willing to pay for TV service, but as you know, it is very difficult for them to purchase scrambled signals. I believe that H.R. 2848 will help alleviate this problem.

Finally, I want to express my appreciation for your efforts on this issue and for holding a hearing on the bill on November 19. There is a real need in rural America for H.R. 2848; if there is anything that I can do to speed enactment, please let me know.

Sincerely,

Jim Olin
Member of Congress

JRO/grh

JIM OLIN
6TH DISTRICT VIRGINIA

WASHINGTON OFFICE
1238 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON DC 20515
(202) 225-5431

COMMITTEES
AGRICULTURE
SMALL BUSINESS

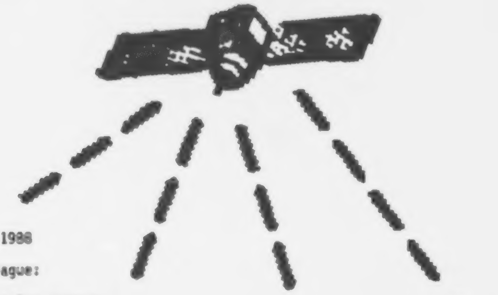
Congress of the United States
House of Representatives
Washington, DC 20515

DISTRICT OFFICES
[illegible]
ROANOKE VA [illegible]
[illegible]

[illegible]
LYNCHBURG VA [illegible]
[illegible]

[illegible]
STAUNTON VA [illegible]
[illegible]

SUITE [illegible]
[illegible]
COURT SQUARE
HARRISONBURG VA [illegible]
[illegible]



March 16, 1988

Dear Colleague:

Back by popular demand.

I'm holding a second Special Order on the Home Satellite Dish issue. The Special Order will take place at the close of business Tuesday, March 22.

House business delayed my previous Special Order, and many of you who had wanted to speak had other commitments that conflicted. Your requests for a second opportunity to discuss this issue have led me to schedule the March 22 time slot.

This is an issue that affects millions of rural residents; the number of dish owners is growing. If your district has rural areas, it no doubt has dish owners.

I invite every concerned Member of Congress to speak. If you contributed last time, I welcome your continued participation. If not, I encourage you to get involved.

The satellite dish groups are being notified, so dish owners throughout the country will be tuning in. Also, I have reserved the first Special Order of the day, so it should take place soon after the close of business.

By the way, I've received positive feedback from the last Special Order from all over the nation.

To reserve a place March 22 or to get more information, please contact Gary Hanson in my office at 5-5431. I look forward to seeing your there.

Sincerely,

Jim

Jim Olin
Member of Congress

384

Turner

TURNER BROADCASTING SYSTEM, INC.
WASHINGTON CORPORATE OFFICE
111 Massachusetts Avenue, N.W., Washington, D.C. 20001

BERTRAM W. CARP
Vice President for Government Affairs
(202) 898-7670

November 20, 1987

The Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties,
  and the Administration of Justice
House Committee on the Judiciary
2137 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your kind remarks regarding our statement in support of H.R. 2848, the Satellite Home Viewer Copyright Act of 1987, submitted for the record at yesterday's hearing.

The purpose of this letter is to clarify the record with respect to footnote 5 of the statement submitted yesterday on behalf of Warner Bros. Inc. and the Motion Picture Association of America, Inc. We are pleased to find in the footnote recognition of SuperStation TBS as the leading cable superstation. But I must respectfully correct any impression left by the footnote that Turner Broadcasting could remotely endorse repeal of the compulsory license under which the SuperStation operates.

SuperStation TBS is not only the first satellite-delivered superstation, it also was the first basic satellite-delivered service, showing the way for the development of cable and satellite programming as it exists today. The SuperStation pays three times the Atlanta-market rate for syndicated programming in recognition of its national audience, and originates nearly one-fourth of its program schedule, at extraordinary cost. In addition to direct payments for original and syndicated programming, program suppliers receive very substantial payments from cable operators under the Copyright Act in further compensation. In addition to the costs outlined above, Turner Broadcasting has acquired and operates the Atlanta Hawks and Atlanta Braves, and has acquired a major film library, in large part to program the SuperStation. These investments are structured in a manner highly dependent on the compulsory license.

Repeal of the compulsory license would deal a savage blow to our company, which has invested heavily under the terms of the compulsory license as we believe Congress intended and invited, to bring quality programming under that license to our over 43 million subscribers. We strongly support retention of that license, and enactment of H.R. 2848 to extend its benefits to home satellite dish owners.

I want to thank the Subcommittee again for the opportunity we have been given to contribute to your consideration of H.R. 2848, and respectfully request that this letter be included in the record of the proceeding.

Very truly yours,

Bert Carp

Bertram W. Carp

BWC:eca

cc: Members of the Subcommittee on
    Courts, Civil Liberties, and
    the Administration of Justice
  Warner Communications, Inc.
  Motion Picture Association of America, Inc.

TRIBUNE
BROADCASTING
Company

Shaun M. Sheehan
Vice President/Washington

1111 19th Street, N.W., Suite 1000
Washington, DC 20036
(202) 775-7750

WPIX TV New York
KTLA TV Los Angeles
WGN TV Chicago
WGNX TV Atlanta
KWGN TV Denver
WGNO TV New Orleans
WPIX FM New York
WGN AM Chicago
KGNR AM and KCTC FM Sacramento
WICC AM Bridgeport, Ct
Tribune Entertainment Company
INN: The Independent News
Tribune/Central City Productions

November 20, 1987

The Honorable Robert W. Kastenmeier
U.S. House of Representatives
2328 Rayburn House Office Building
Washington, D.C. 20515

Dear Rep. Kastenmeier:

At yesterday's hearing on (H.R. 2848), Tribune Broadcasting's WGN-TV and to a lesser extent WPIX-TV and their superstation status (outside of the home market satellite-delivered reach) were mentioned several times.

This, hopefully, will flesh-out the discussion from our Company's perspective.

First-off, these are "passive" superstations as opposed to WTBS, Turner Broadcasting, which is "active". The only substitution by us of the broadcast signal viewed in the home markets of Chicago and New York is on WGN-TV during Cubs baseball which is another Tribune subsidiary. During the games, some local commercials are deleted and national spot advertisements are substituted for them. This is the broadcast uplinked by United Video and distributed nationwide. Therefore, during Cub games, WGN is transformed from "passive" to "active".

WGN became a superstation because of Cubs baseball, the "Bozo" Children's Show, other sports and strong news, not by providing syndicated shows already available to viewers from other sources.

Attached are background materials we developed for discussing the Syndicated Exclusivity proposal or reimposition of black-out requirements presently before the Federal Communications Commission. They are helpful in that they establish actual superstation viewership and refute the perceived harm caused by distant signal importation.

The catch-22 in the FCC's proposal is that cable operators may decide to drop WGN and other superstations rather than encumber the expense and subscriber dissatisfaction inherent in black-outs. The shows that are the least watched, the duplicated syndicated programming will force the loss of daytime baseball, et al (the more popular programs which are not affected by the proposed rule).

In checking with United Video, their distribution of WGN to cable systems skews very heavily to rural systems, reinforcing, from our perspective, the justification for H.R. 2848, to augment viewer choice. It seems that underserved markets and areas have created the demand for our signal.

In closing, I can assure you that the distribution community knows full well the reach of the shows they sell in Syndication. If the extended reach of a superstation is such a market hindrance, why did Viacom sell Cosby to superstation WWOR New York, in the first market in which it was offered and at a record breaking price?

Black-out restrictions for backyard dish owners are simply unnecessary.

If this office can provide further amplification, please don't hesitate to call.

Sincerely,

Attachment

SMS/mcb

TRIBUNE
BROADCASTING
Company

[illegible]

TRIBUNE BROADCASTING'S
OPPOSITION TO SYNDEX

The Federal Communications Commission is conducting a rulemaking to reimpose Syndicated Exclusivity (the black-out rules). If adopted, this will impact Superstations the most. In fact, it could eliminate them completely.

Tribune Broadcasting, as the operator of passive Superstations WGN-TV and WPIX, would be uniquely effected if the rule is reinstated.

WGN-TV is presently available to 23,000,000 cable television subscribers nationwide. Its noon and nine o'clock news and the Cubs playing in the Friendly Confines of Wrigley Field as described by Harry Caray are its main attractions.

Tribune Broadcasting believes it can factually establish that Syndicated Exclusivity is totally unnecessary. The FCC reached the same conclusion when it abolished the old rule in 1980 and refused to revisit it in 1984.

The FCC has resurrected the issue, we believe, to further their theoretical notion of a free marketplace while ignoring the realities of today's television business and the anticonsumer implications of forcing cable operators to black-out shows.

At present, cable operators pay into a copyright pool as administered by the Copyright Royalty Tribunal in order to import distant broadcast television stations. They combine these signals along with local stations and cable-only services such as ESPN in a package for their subscribers.

The FCC's leadership is philosophically against this Compulsory License arrangement. Without recent Hill pressure, as urged by broadcasters and cable operators, they were also philosophically opposed to requiring local cable systems to retransmit local broadcast stations -- "must carry". There is a connection between "must carry" and the Compulsory License. The FCC envisions a television marketplace without them.

This latest initiative on Syndicated Exclusivity is, in our opinion, a furtherance of their overall philosophy. The real target is the Compulsory License which can only be altered by Act of Congress.

If Syndicated Exclusivity is reinstated, cable operators would be required to black-out shows on the distant station if the program was also available on a local station. Yet these shows on the distant signal command virtually no audience. The appeal of a Superstation is baseball which is not effected by Syndicated Exclusivity.

The Catch-22 is that the cable operator will find it too expensive and laborious to administer the black-outs and WGN will be dropped in favor of a cable-only program source.

WGN does not sell in the local station's market and its distant audience as the attached data proves is modest. The cable operator was carrying it to add baseball to its overall package.

Please familiarize yourself with this issue. Contact this office for any further information, you may require.

PERCEIVED HARM VS REALITY

It is presumed that Syndicated Exclusivity rules are necessary to protect shows in syndication and the stations that broadcast them.

Since the old rules were abolished in 1980, (following four years of information gathering, economic studies and professional analysis) there has been a proliferation of independent stations, growth in the marketshare achieved by independent stations (garnered from affiliate competition), and an exponential rise in the cost of syndicated programming.

Number of Independent Stations	112	277	(1980-1986)
Share Average	14%	21%	(1980-1985)
Average Cost of Syndicated Programming		+101%	(1980-1986)

Cable markets a range of video services with local stations attracting the vast majority of viewers; distant signals provide variety along with cable-originated program services and pay channels. It is this overall package that entices subscribers.

The least attractive portions of a superstation's schedule on cable are the syndicated programs also available in the local market.

In WGN's experience, Cubs baseball, especially daytime games, are what cable consumers find the most appealing.

CATCH - 22 -- SYNDICATED EXCLUSIVITY WILL PROVE TOO EXPENSIVE AND LABORIOUS TO ADMINISTER. THE CONSUMER BENEFIT OF DAYTIME BASEBALL AND PRIME TIME NEWS WHICH ARE NOT EFFECTED BY POTENTIAL BLACK-OUTS WILL BE LOST.

SUPERSTATION RATINGS

The following data illustrates that superstations do not harm local stations. Attached are ratings information on:

- -- Cubs Baseball, WGN's most watched programming;
- -- Two Tribune Entertainment specials -- simultaneously broadcast live on superstations and 180 local stations;
- -- Comparison of syndicated program "Facts of Life" simultaneously available on cable by passive superstation WGN and local station KRIV in Houston;
- -- Distant signal ratings in the thirteen metered markets.

THE SUPERSTATIONS ARE NOT SIPHONING AUDIENCE NOR ARE THEY SELLING IN LOCAL MARKETS.

NTI CUBS RATINGS

Cubs baseball is passive superstation WGN-TV's most watched product.

The attached data emphatically dispells the perception that the superstation siphons sizeable audiences from local stations.

[illegible] CUBS BASEBALL
[illegible] RATINGS

[illegible]

	[illegible]		CUBS		METS		[illegible]		CUBS		METS	
	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	HH
lene-Sweetwater	1.3	1530	0.4	475	-	-	0.8	972	0.2	318	-	-
-Ardmore	1.2	875	0.4	255		10	1.2	880	0.6	446	-	-
any-Sch-Troy	0.3	808	-	-	2.6	12504	0.2	1202	0.1	303	3.3	15087
any, GA	7.5	9090	0.8	971	-	-	4.0	4909	0.8	1016	0.1	131
uquerque-Farmington	0.9	3675	0.8	2173	-	147	1.4	5655	1.6	6313	-	161
xandria, LA	2.7	2363	1.1	979	0.1	63	1.7	1514	1.4	1220	-	-
xandria, MN	0.4	302	0.1	46	-	-	0.4	194	0.4	177	-	-
ena	0.1	21	0.1	13	-	-	-	-	-	-	-	-
arillo	1.9	2383	1.4	2475	-	-	2.0	3087	0.7	1399	0.1	119
chorage	1.0	1081	0.4	438	0.2	173	1.3	1363	0.9	932	0.4	464
lanta	10.4	122810	3.5	5470	0.1	1396	8.0	95415	0.4	4855	0.2	2556
gusta	4.9	14008	-	70	-	-	4.0	8263	-	-	-	-
stin, TX	1.3	3006	0.4	1071	-	52	1.1	3404	0.2	844	0.3	852
kersfield	-	-	0.2	231	-	-	-	-	-	-	-	-
ltimore	0.3	2926	0.1	1389	0.2	1817	0.3	2011	-	327	0.2	2131
ngor	0.8	1012	0.1	130	-	-	0.5	600	0.1	81	0.3	245
ton Rouge	3.2	5098	1.3	3253	-	42	1.1	2852	0.8	1926	-	-
eaumont-Pt. Arthur	1.2	2129	0.1	107	-	-	1.5	2885	0.2	209	0.2	313
ckley-Bluefield OakHill	3.5	4861	0.2	324	-	61	2.5	3405	0.1	173	0.3	378
end	1.3	715	0.1	22	-	-	2.9	717	0.1	14	-	-
Billings	1.3	1158	0.2	161	-	-	2.7	2452	1.0	913	-	-
Biloxi-Gulfport	4.0	3739	0.1	63	-	-	4.4	2918	0.1	80	-	-
Binghamton	0.8	1344	0.2	204	2.7	4618	0.8	1371	0.1	128	3.3	5617
Birmingham, Anniston	2.6	15542	0.3	2700	0.1	625	2.7	15880	0.8	4493	0.5	3092
Boise	1.5	2205	0.7	985	-	-	1.9	2878	1.6	2329	-	-
Boston, [illegible]	0.2	4194	-	-	0.2	4403	0.2	3858	-	97	0.3	6027
Bowling Green	2.2	807	1.3	476	0.9	340	1.5	546	2.0	730	1.5	540
Buffalo	0.1	381	-	117	1.0	[illegible]	0.3	1067	0.2	1048	1.8	11120
Burlington-Plattsburg	0.5	1120	-	-	0.5	1220	0.3	603	-	-	0.5	1207
Butte	0.1	42	0.7	317	-	-	1.0	487	0.7	348	-	-
Casper-Riverton	0.7	373	0.3	118	-	-	0.5	475	0.3	151	-	-
Cedar [illegible]-Waterloo,Dubuq *	1.6	4130	3.6 *	8545	0.3	848	1.4	4436	4.4 *	14211	0.1	303
Champaign & Sprngfld-Decatur *	1.4	4088	4.2 *	13996	-	-	1.0	3885	4.4 *	14135	-	-
Charleston-Huntington	3.0	9948	0.6	3126	-	-	1.8	8820	0.5	2639	-	-
Charleston, SC	2.5	8036	0.5	1075	-	-	1.7	3508	1.5	3148	-	-

COPYRIGHT [illegible] BY A.C. NIELSEN COMPANY

Cubs Network Stations

CHICAGO CUBS BASEBALL
NATIONAL RATINGS

MAY, 1988

	BRAVES		CUBS		METS		BRAVES		CUBS		METS	
	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH
rlotte	3.1	10870	0.1	528	0.4	2495	3.0	19298	0.3	3030	0.4	2375
ttanooga	5.7	18347	0.9	3530	-	35	4.6	13270	1.9	5365	0.4	1208
yenne	0.5	289	-	-	-	-	0.9	408	0.1	58	-	-
icago *	0.2	4041	8.1*	343702*	0.1	3573	0.2	6140	9.3 *	38178*	0.1	3075
ico-Redding	0.4	340	0.2	308	0.1	90	0.6	987	0.2	343	0.1	98
ncinnati	1.1	7528	1.0	6851	0.5	3770	0.4	3143	0.8	5378	0.6	4295
arksburg-Weston	1.8	1488	0.1	78	-	11	1.9	1524	0.1	115	-	-
eveland-Akron	0.5	7423	-	303	0.2	2880	0.3	4535	0.2	2277	0.4	5128
olorado Springs-Pueblo	1.0	2135	0.3	605	-	-	1.3	2040	0.3	714	-	-
olumbia-Jefferson City	1.0	1434	0.3	358	-	-	0.7	912	0.4	619	-	-
olumbia, SC	2.5	6384	0.0	1434	0.1	311	2.4	6022	0.1	331	0.1	255
olumbus-Tupelo	2.1	3080	0.4	647	0.1	135	2.4	3595	1.3	1918	0.1	212
olumbus, GA	7.0	12350	0.8	1308	-	-	4.5	7821	0.8	1408	0.1	95
olumbus, OH	1.2	7113	0.2	1484	0.1	478	1.2	7044	0.5	3247	0.3	1567
orpus Christi	1.5	3475	1.0	1880	0.1	104	1.3	2278	1.0	1740	0.2	323
allas-Ft. Worth	0.3	4547	0.3	3891	-	-	0.6	8673	0.7	10815	-	131
avenport-R. Island-Moline *	1.1	3568	4.1*	13482*	-	-	0.7	2184	4.6	14507*	-	-
ayton	1.8	8705	0.2	781	-	138	1.3	6136	0.5	2180	-	189
Denver	0.9	9198	0.5	4497	0.1	1434	0.8	8158	1.1	11047	0.4	4207
Des Moines-Ames*	0.8	2535	2.5*	8831*	-	-	0.6	2290	2.1 *	7400*	-	-
Detroit	0.2	4108	0.1	1701	0.2	3135	0.2	3484	0.3	5016	0.1	1187
Dothan	3.9	3995	0.6	646	-	-	3.9	3819	0.3	291	-	-
Duluth-Superior	1.5	2858	0.4	808	-	-	1.8	3008	0.5	872	-	-
El Paso	1.0	2221	0.3	653	0.6	1438	0.6	1427	0.3	622	0.3	690
Elmira	0.7	505	0.1	93	3.8	2713	1.5	1053	0.7	324	3.1	2220
Erie	1.8	2378	0.4	326	0.2	314	1.3	2042	0.1	91	1.4	3004
Eugene	1.8	2781	0.2	253	-	-	1.4	2248	0.6	946	0.1	79
Eureka	1.2	681	1.3	731	0.1	45	2.9	1040	1.7	943	-	-
Evansville *	2.1	5216	2.8*	6513 *	-	-	1.0	3489	2.3 *	5872 *	0.2	415
Fairbanks	2.5	616	2.5	625	0.7	185	-	-	-	-	-	-
Fargo-Valley City	0.8	1619	1.1	2272	-	-	0.9	1872	0.9	1833	-	-
Flint-Saginaw-Bay City	0.6	3528	0.4	1753	-	-	0.2	1088	0.3	1338	-	-
Florence, SC	2.6	3828	0.3	297	0.1	90	3.7	4948	0.1	138	1.1	1167
Fresno (Visalia)	1.1	4487	0.3	1270	-	-	0.8	2549	0.4	1611	-	-
Ft. Myers-Naples	3.7	7480	0.5	1078	0.1	360	2.4	4810	1.9	3813	1.8	3848

COPYRIGHT 1988 BY A.C. NIELSEN COMPANY

395

* Cubs Network Stations

388

CHICAGO CUBS BASEBALL
NATIONAL RATINGS

	MAY, 1988						JULY, 1988					
	BRAVES		CUBS		METS		BRAVES		CUBS		METS	
	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH
Ft. Smith	3.3	3004	0.7	905	-	-	2.3	3188	1.1	1536	-	-
Ft. Wayne	1.3	3130	2.0 *	4566	-	53	0.5	1101	2.5*	4791	0.1	236
Gainesville	2.9	2187	0.3	346	-	-	3.2	2441	0.2	160	0.1	114
Glendive	3.7	198	2.4	130	-	-	1.2	68	0.8	43	-	-
Grand Junction-Montrose	0.6	357	0.2	116	-	-	2.1	1300	0.4	200	-	-
Grand Rapids-Kal-B. Crk	0.5	3016	0.7	4142	-	165	0.4	2003	1.1	6583	-	-
Great Falls	2.5	1006	0.9	621	-	-	2.9	1911	1.0	640	-	-
Green Bay	0.6	2150	1.3	4579	-	130	0.2	695	1.6	8702	0.1	406
Greensboro-H.Pt.-W. Salem	2.6	13104	0.3	1693	-	-	2.0	9530	0.6	3012	-	108
Greenville-N. Bern-Wash	2.3	5416	0.9	2128	0.4	698	1.9	4469	0.9	2107	0.5	1121
Greenville-Spart-Ash	4.5	27424	0.7	4354	-	306	2.8	17250	0.8	4734	0.1	475
Greenwood	2.4	1061	0.3	257	-	-	3.5	5750	1.0	810	-	-
Harlingen-Weslaco	1.9	3258	1.6	2641	-	-	1.2	2105	1.8	3041	-	-
Harrisburg-Lncstr-Leb-York	0.4	2254	0.1	291	0.4	2104	0.4	2330	0.1	690	0.6	3270
Harrisonburg	0.7	230	1.4	451	-	-	0.7	225	0.4	123	-	-
Hartford & New Haven	0.2	1513	-	-	1.5	11605	0.2	1320	-	-	2.1	17180
Hattiesburg-Laurel	1.4	1175	0.9	772	0.2	142	2.8	2461	1.1	903	-	-
Helena	2.6	321	0.4	79	-	-	3.1	405	-	-	-	-
Honolulu	1.6	5133	-	-	-	-	-	-	-	-	-	-
Houston	0.5	7382	0.3	3867	-	-	0.6	8636	0.6	9000	-	-
Huntsville-Decatur, Florence	4.7	12226	0.6	1429	-	68	3.8	9791	0.6	1531	0.3	675
Idaho Falls-Pocatello	1.6	1706	-	40	-	-	1.9	1758	0.1	104	-	-
Indianapolis	1.2	10208	2.5*	21858*	-	-	0.9	7384	2.8*	24102*	-	-
Jackson, MS	2.3	6610	0.6	1721	-	-	1.8	5034	1.2	3476	-	-
Jackson, TN	3.9	1744	0.1	63	-	-	3.7	1641	0.3	206	-	-
Jacksonville	3.1	12298	1.0	4110	-	-	2.5	10037	1.2	4898	-	70
Johnstown-Altoona	1.6	4540	0.2	528	0.8	3444	0.7	1907	0.4	1219	1.1	3138
Jonesboro	3.2	1406	0.6	537	-	-	2.4	1303	2.7	1795	0.1	44
Joplin-Pittsburg	1.4	2356	1.0	1695	-	-	1.6	2910	0.7	1146	-	-
Kansas City	0.4	3763	0.5	3179	-	-	0.6	4911	1.1	7625	-	-
Knoxville	2.6	11603	1.1	4341	0.1	471	2.4	9915	1.1	4642	0.2	739
La Crosse-Eau Claire	1.0	1473	1.6	3417	-	26	0.4	677	1.6	3477	0.1	161
Lafayette, LA	1.4	2843	-	38	-	-	2.1	4178	-	57	-	-
Lake Charles	1.6	1179	0.1	56	-	-	2.5	1881	-	-	-	-
Lansing	0.1	270	0.1	307	-	-	0.3	615	0.2	650	-	-

COPYRIGHT 1988 BY A.C. NIELSEN COMPANY

Cubs Network Stations

CHICAGO CUBS BASEBALL
NATIONAL RATINGS

MAY, 1986

	BRAVES		CUBS		METS	
	1986 HH Rating	1986 HH (000)	1986 HH Rating	1986 HH (000)	1986 HH Rating	1986 HH (000)
redo	1.7	554	-	-	-	-
s Vegas	2.4	5399	2.2	4888	-	-
xington	1.6	4794	0.8	2381	-	120
ma	1.4	512	-	-	-	-
ncoln-Hastings-Kearney Plus	1.7	4336	1.5	3747	-	-
ittle Rock-Pine Bluff	1.5	6881	0.7	3013	-	-
os Angeles	0.3	8972	0.3	12635	0.1	2200
ouisville	1.8	9418	0.9	4640	-	80
ubbock	1.5	2216	0.5	781	0.1	200
acon	7.8	11917	-	18	-	-
Madison	1.3	2700	1.5	3240	-	-
Mankato	0.9	485	0.6	300	-	-
Marquette	1.0	490	1.3	674	0.5	230
Mason City-Austin-Rochester	1.2	1090	1.0	1479	-	-
Medford-Klamath Falls	1.5	1020	1.1	1200	0.2	237
Memphis	1.5	8428	0.8	4533	0.4	2212
Meridian	2.9	2105	1.3	977	0.2	141
Miami-Ft. Lauderdale	0.9	10880	0.2	3075	1.1	13159
Milwaukee	0.2	1730	0.7	4004	0.1	1220
Minneapolis-St. Paul	0.1	1343	0.3	2057	-	-
Minot-Bismarck-Dickinson	1.3	1848	0.6	1801	0.1	149
Missoula	2.7	1887	0.3	190	-	-
Mobile-Pensacola	3.6	14708	1.1	4710	-	-
Monroe-El Dorado	1.9	3394	1.4	3413	0.1	217
Monterey-Salinas	-	71	0.1	205	-	-
Montgomery	3.6	5808	0.6	1153	-	-
Nashville	1.7	11722	0.4	3988	-	170
New Orleans	0.9	3448	0.7	4276	0.2	1106
New York	0.1	8808	-	148	8.1	542504
Norfolk-Portsmouth-Newpt New	1.9	9011	0.3	1351	0.5	3179
North Platte	3.3	538	0.1	20	-	-
Odessa-Midland-Monahans	1.5	3960	2.1	2021	-	42
Oklahoma City	1.4	8870	0.5	3785	-	-
Omaha	1.3	4175	1.5	5256	0.4	1563
Orlando-Daytona Beach	2.6	18498	1.0	6800	0.4	2523

JULY, 1986

	BRAVES		CUBS		METS	
	1986 HH Rating	1986 HH (000)	1986 HH Rating	1986 HH (000)	1986 HH Rating	1986 HH (000)
redo	1.4	488	-	6	-	-
s Vegas	1.6	3573	3.1	4988	0.1	188
xington	1.3	3835	1.1	3237	1.1	74
ma	1.8	737	-	-	-	-
ncoln-Hastings-Kearney Plus	1.8	4036	1.5	3943	-	83
ittle Rock-Pine Bluff	1.1	5010	1.8	8174	-	-
os Angeles	0.6	37700	0.3	11233	0.2	8880
ouisville	1.1	5828	2.2	11170	-	81
ubbock	2.2	3295	0.9	1333	0.1	188
acon	5.5	8434	-	-	-	-
Madison	0.8	1747	1.3	3000	-	-
Mankato	0.8	438	0.6	331	-	-
Marquette	1.1	587	1.8	809	0.4	905
Mason City-Austin-Rochester	1.3	1880	1.0	1416	0.4	848
Medford-Klamath Falls	2.1	2301	0.7	817	-	-
Memphis	1.4	9159	1.1	5818	0.7	4159
Meridian	3.0	2177	1.5	1078	0.1	38
Miami-Ft. Lauderdale	0.9	10273	0.3	3712	1.5	17632
Milwaukee	0.2	1231	1.2	8561	0.1	804
Minneapolis-St. Paul	0.2	1150	0.2	2141	-	38
Minot-Bismarck-Dickinson	1.7	2166	0.5	718	-	-
Missoula	2.1	1463	0.5	392	0.1	38
Mobile-Pensacola	3.3	13730	1.1	4715	-	44
Monroe-El Dorado	2.9	5112	1.6	3800	0.4	713
Monterey-Salinas	0.3	580	0.1	123	-	-
Montgomery	2.9	5012	1.3	2548	0.1	165
Nashville	2.1	13808	1.3	8897	0.2	1161
New Orleans	1.3	8177	1.3	8427	0.1	508
New York	0.1	9549	-	961	9.2	610078
Norfolk-Portsmouth-Newpt New	1.1	5553	0.4	1090	0.7	3511
North Platte	1.5	237	0.1	14	-	-
Odessa-Midland-Monahans	1.8	2523	2.4	3382	-	-
Oklahoma City	1.0	8007	1.3	7011	-	-
Omaha	1.2	4150	1.9	8877	0.4	1438
Orlando-Daytona Beach	2.4	17148	1.3	9833	0.8	3828

COPYRIGHT 1986 BY A.C. NIELSEN COMPANY

CHICAGO CUBS BASEBALL
NATIONAL RATINGS

	MAY, 1986						JULY, 1986					
	BRAVES		CUBS		METS		BRAVES		CUBS		METS	
	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH
Ottumwa-Kirksville	1.1	404	4.4*	1941*	0.2	82	0.9	417	4.2 *	1842*	0.3	121
Paducah-C, Girardeau-Harrbg	2.2	6905	1.5	4083	-	-	0.8	2549	3.0	6403	-	-
Palm Springs	0.3	144	0.8	409	-	-	0.1	103	0.2	177	-	-
Panama City	5.2	3547	0.5	320	-	-	4.0	2732	0.3	238	-	-
Parkersburg	3.3	1301	0.5	308	-	-	3.9	2302	-	-	-	3
Peoria *	1.3	2733	3.2*	6933*	-	-	1.1	2400	4.1 *	8810*	-	-
Philadelphia	0.3	6869	-	1147	0.8	21307	0.2	6277	-	510	0.8	30808
Phoenix, Flagstaff	1.0	8537	1.1	9403	-	177	1.3	11129	2.0	10892	-	142
Pittsburgh	0.7	8782	-	196	0.9	11313	0.1	12140 *	-	104	0.7	8887
Portland-Poland Spring	0.3	982	0.2	723	-	-	0.3	971	-	90	0.1	404
Portland, OR	1.3	10185	0.6	4753	-	41	1.6	12501	1.2	8049	-	-
Presque Isle	1.8	464	0.3	77	-	11	0.6	169	0.6	180	0.3	79
Providence	0.4	2403	-	-	0.2	1153	0.3	1803	-	-	0.4	2043
Quincy-Hannibal-Keokuk	1.5	1807	3.2 *	3805*	0.1	80	0.6	798	4.6 *	3658*	0.3	319
Raleigh-Durham	1.5	8731	0.1	629	0.1	566	1.2	6807	0.5	3135	0.3	1583
Rapid City	0.3	208	0.9	741	0.1	65	0.4	321	0.7	570	-	-
Reno	1.4	2212	0.3	470	0.2	280	2.6	4181	1.2	1832	-	-
Richmond-Petrsbg, Charlotvl	1.3	5191	0.1	304	-	180	2.0	8898	0.2	1522	0.4	1718
Roanoke-Lynchburg	2.4	8304	0.9	3018	0.1	198	2.5	8728	0.8	3900	0.4	1425
Rochester	0.4	1537	-	-	1.5	5186	0.4	1497	-	38	2.2	7495
Rockford	0.5	997	3.3 *	6370*	-	-	0.8	1532	4.6 *	8903 *	-	-
Roswell	2.4	1445	0.2	100	-	-	2.4	1419	0.6	378	-	-
Sacramento-Stockton	0.9	7878	0.1	404	-	304	1.1	9570	0.2	1595	0.1	684
Salisbury	0.4	344	-	-	-	-	0.2	168	0.1	80	-	-
Salt Lake City	1.1	6597	0.5	2823	-	161	0.7	4018	0.5	2004	-	98
San Angelo	2.7	1128	0.1	57	-	-	2.6	1077	0.2	70	-	-
San Antonio	1.3	6898	1.1	5483	0.7	3714	1.1	5800	1.2	6306	1.8	8010
San Diego	0.6	4928	-	-	-	-	1.4	10823	0.1	804	-	-
San Francisco-Oakland	0.4	8043	-	338	-	195	0.4	8806	0.1	1221	-	285
Santa Barbara-Santa Maria	0.1	282	-	70	-	-	-	-	0.1	258	-	-
Savannah	5.0	10015	0.4	700	-	-	4.8	8884	0.1	237	-	-
Seattle-Tacoma	0.7	8137	-	344	-	518	0.6	7647	-	-	-	-
Shreveport	2.0	8875	0.4	1800	-	-	2.0	8100	0.3	1498	0.2	873
Sioux City	1.9	2978	2.9 *	4449	0.8	1174	1.3	1029	2.3 *	3803	0.7	1051
Sioux Falls (Mitchell)	0.8	1738	0.6	1344	0.1	153	1.2	2079	1.6	3475	0.2	463

COPYRIGHT 1986 BY A.C. NIELSEN COMPANY

Cubs Network Stations

NATIONAL RATINGS

	BRAVES		CUBS		METS		BRAVES		CUBS		METS	
	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	DMA HH	DMA HH Rating	HH
uth Bend-Elkhart	0.8	2120	4.7*	33498*	-	110	0.6	1801	4.9*	13708*	-	-
okane	1.4	4403	0.2	766	-	-	1.6	5131	0.7	3138	-	-
ringfield-Holyoke	-	-	-	-	0.8	1889	0.1	178	-	-	0.8	1795
ringfield, MO	2.0	8471	1.0	2737	-	-	1.1	2016	1.3	3350	-	113
., Joseph	1.0	586	0.1	42	-	-	0.7	430	-	22	-	-
. Louis	1.0	10008	0.7	7215	-	-	0.8	[illegible]	1.1	11220	-	74
racuse	0.6	2130	-	146	1.7	6273	0.5	1990	0.1	380	3.7	13863
allahassee, Thomasville	3.0	4710	-	-	-	-	3.3	5100	-	-	-	-
ampa-St. Petersbg,Sarasota	1.7	19054	1.0	12120	0.3	3501	1.9	22440	1.8	11574	0.5	6816
erre Haute	1.6	2983	3.3*	5774*	0.3	587	0.7	1226	3.5*	8991*	0.8	1418
oledo	0.5	2201	0.1	215	-	-	0.5	2130	0.1	511	-	-
opeka	1.4	1092	0.5	658	-	-	0.4	566	0.4	903	-	-
raverse City-Cadillac	-	36	0.1	211	-	-	0.3	516	0.2	357	-	-
ri-Cities, TN-VA	3.4	9228	0.7	1786	-	-	3.1	8483	0.8	2240	-	75
ucson (Nogales)	0.9	2533	1.1	3035	0.5	1338	1.2	3391	2.7	7538	0.9	2488
ulsa	1.1	5315	1.3	5847	-	-	0.9	4925	1.3	3817	-	-
win Falls	4.4	1131	0.2	53	-	-	0.6	676	-	-	-	-
yler	1.1	1284	0.2	232	-	-	1.0	1224	0.6	708	-	-
tica	0.2	219	-	-	3.6	3531	0.1	145	0.2	174	6.4	8041
ictoria	0.8	277	-	-	-	-	0.9	312	0.2	97	-	-
aco-Temple	1.5	3283	0.5	1173	-	-	2.3	5831	0.5	1183	-	-
Washington,DC-Hagerstown	0.4	6942	0.1	984	0.2	3702	0.3	4578	0.1	2003	0.8	3088
Watertown	0.8	302	-	-	1.3	817	1.0	631	0.1	61	2.8	1809
Wausau-Rhinelander	0.3	441	0.5	879	-	-	0.4	607	1.0	1672	-	46
West Palm Beach,Ft. Pierce	3.4	14430	0.1	475	1.5	6395	2.3	9000	0.3	698	1.4	9898
Wheeling-Steubenville	1.9	3434	-	-	-	-	1.4	2368	-	25	-	-
Wichita Falls & Lawton	2.0	3211	0.1	100	-	-	2.3	3587	0.6	813	-	-
Wichita-Hutchinson Plus	1.8	7318	0.7	2899	-	-	1.7	6872	1.1	4991	-	-
Wilkes Barre-Scranton	0.7	3436	0.1	322	2.7	13773	0.1	501	0.1	688	3.5	14577
Wilmington	2.0	4826	1.1	1019	0.3	505	2.1	3052	0.6	1381	0.6	1182
Yakima	1.1	1812	0.3	480	-	-	1.1	1963	0.5	783	-	-
Youngstown	0.4	976	-	-	-	1400	0.5	1100	-	83	0.0	1033
Yuma-El Centro	0.2	129	0.3	101	-	-	0.1	87	0.3	204	-	-
Zanesville	2.6	790	-	-	-	-	2.0	634	-	-	-	-

COPYRIGHT 1969 BY A.C. NIELSEN COMPANY

* Cubs Network Stations

LIVE BROADCAST

"MYSTERY OF AL CAPONE"S VAULTS"

Attached are analyses demonstrating the overwhelming numbers generated by the "MYSTERY OF AL CAPONE'S VAULTS" in the metered markets. The program was broadcast live on superstation's WGN-TV and WPIX. Please note the Los Angeles rating achieved for a delayed broadcast. Viewers could have watched the program earlier via superstation.

	AL CAPONE		
	STATION	RTG	SH
New York	WPIX (I/V)	33	45
Los Angeles	KTLA (I/V)	46	61
Chicago	WGN (I/V)	57	73
Philadelphia	WTAF (I/U)	30	41
S.F./Oakland	KTVU (I/V)	29	46
Boston	WLVI (I/U)	21	30
Detroit	WKBD (I/U)	39	53
Wash, D.C. ***	WDCA (I/U)	4	13
Dallas/Ft.Worth	KXAS (N/V)	35	52
Houston	KHTV (I/U)	15	23
Miami/Ft.Laud.	WDZL (I/U)	27	38
Denver	KWGN (I/V)	41	61
** AVG:		32	45
11-MKT AVG: (Excludes WDCA)		34	48
12-MKT AVG:		31	45

**Comparable Metered Markets

***Delayed Broadcast (11 pm - 1 am) following Hockey telecast

AMERICAN VICE:
THE DOPING OF A NATION

Attached are rating which were generated by the LIVE Telecast of AMERICAN VICE, in the 13 metered markets. These analyses compare the show with lead-in shows as well as competitive time period programming.

As you will see, these numbers are extremely impressive by themselves but even more so when compared with what these stations achieved during the four Tuesdays of the November 1986 measurement period:

	AMERICAN VICE		REGULAR TIME PERIOD PROGRAMMING		% INCREASE AM. VICE VS REG. PROGRAMMING	
	RTG	SH	RTG	SH	RTG	SH
ATLANTA/WGNX (I/U) (TUE. 8-10 pm)	13.3	18	4.6	6	+189	+200
BOSTON/WLVI (I/U) (Tue. 8-10 pm)	6.0	9	6.4	10*	- 6	- 10
CHICAGO/WGN (I/V) (Tue. 7-9 pm)	18.1	26	8.9	13	+103	+100
DALLAS/KTVT (I/V) (Tue. 7-9 pm)	22.0	32	6.5	9	+238	+256
DENVER/KWGN (I/V) (Tue. 7-9 pm)	21.6	34	9.4	15	+130	+127
DETROIT/WKBD (I/U) (Tue. 8-10 pm)	22.2	30	10.5	15	+111	+100
HOUSTON/KHTV (I/U) (Tue. 7-9 pm)	13.4	20	5.9	8	+127	+150
L.A./KTLA (I/V) (Tue. 8-10 pm)	16.1	24	8.4	12	+ 92	+100
MIAMI/WCIX (I/V) (Tue. 8-10 pm)	16.6	23	5.8	9	+186	+156
NEW YORK/WPIX (I/V) (Tue. 8-10 pm)	12.1	17	7.7	11	+ 57	+ 55
PHIL./WTAF (I/U) (Tue. 8-10 pm)	10.7	15	5.8	8	+ 84	+ 88
SAN. FRAN./KTVU (I/V) (Tue. 8-10 pm)	13.6	20	8.5	13	+ 60	+ 54
WASH. DC/WDCA (I/U) (Tue. 8-10 pm)	8.3	12	4.6	7	+ 80	+ 71
	[illegible]	22	7.2	10	+107	+120

* Excludes Basketball

SOURCE: AMERICAN VICE - NSI Overnights
Regular Programming -NSI/MICRONODE, November 1986

Additionally, AMERICAN VICE ranked # 1 or # 2 in eight of its 13 etered markets (or 62%):

Dallas/Ft. Worth	#1
Denver	#1
Detroit	#1
Chicago	#2
Houston	#2
Los Angeles	#2
Miami/Ft. Laud.	#2
San Francisco	#2

AMERICAN VICE also did a tremendous job of improving its SHARE over lead-in programming:

13 METERED MARKETS	AVERAGE SHARE %
AMERICAN VICE	22
LEAD-IN Shows	11
AMERICAN VICE (% INC):	+100

DUPLICATIVE PROGRAMMING
"FACTS OF LIFE"
HOUSTON VS. CHICAGO COMPARISON

HOUSTON

1. DMA Market Rank - #11

2. DMA Cable Penetration - 42%

3. WGN Penetration - 29.3% (based on Nielsen code system as of 7/14/86)

4. WTBS Penetration - 33.5% (based on Nielsen code system as of 7/14/86)

Total Cable - 43.7%

5. M-Sun 7 am - 1 am Share WTBS - 1 RTG/1 SH
WGN - Not reportable

6. M-F 5-7 pm - WTBS - Not reportable
WGN - Not reportable

7. M-F 5-5:30 pm - Share points controlled by home market stations = 92

8. M-F 5-5:30 pm - KRIV NSI 7 RTG 15 SH (Facts of Life)
ARB 7 RTG 16 SH

9. 3 Affiliates/3 Commercial Independents/1 Public/
1 Spanish = 8 stations

CHICAGO

1. DMA Market Rank - #3

2. DMA Cable Penetration - 33%

3. M-F 5-5:30 pm - Share points controlled by home market stations = 93

4. M-F 5-5:30 pm - WGN NSI 7 RTG 14 SH (Facts of Life)
ARB 8 RTG 15 SH

5. 3 Affiliates/4 Commercial Independents/2 Public/
1 Spanish = 10 stations

Superstations collectively achieve less than 1 rating point in the major markets.

The metered market average spill-in from distant signals totals 3 rating/7 share points divided as follows:

	%	SH
Adjacent Market Affiliate	1.5	4
Adjacent Market Independents	.4	1
Superstation - WTBS	.4	1
Superstation - Others	.3	1
Other	---	---

DISTANT SIGNAL SPILL-IN

METERED MARKETS

NIELSEN NOV. '86 MON-SUN 7A-1A

SPILL-IN

	ADJACENT MARKETS				SUPERSTATIONS					
	AFFILIATE		INDEPENDENT		WTBS		OTHERS		OTHER	
	%	SH	%	SH	%	SH	%	SH	%	SH
Atlanta	2.2	5	.2	0	-	-	.6	2	-	-
Boston	2.8	7	.1	0	.4	1	.8	2	-	-
Chicago	.9	2	.1	0	.3	1	.2	1	-	-
Dallas	1.1	3	-	-	.5	1	.4	1	-	-
Denver	1.2	3	-	-	.7	2	.5	1	-	-
Detroit	1.3	3	.3	1	.5	1	.3	1	.3	1*
Houston	.6	1	.5	1	.5	1	.4	1	-	-
Los Angeles	.2	1	.1	0	.3	1	.2	0	-	-
Miami	1.2	3	.6	1	.8	2	.7	2	-	-
New York	1.4	3	.4	1	.4	1	-	-	.1	-
Philadelphia	1.5	4	1.8	4	.4	1	-	-	-	-
San Francisco	2.3	6	.8	2	.4	1	-	-	-	-
Washington	3.2	8	.7	2	.5	1	.2	0	-	-
AVERAGE	1.5	.4	.4	1	.4	1	.3	1	-	-

PASSIVE SUPERSTATION WGN'S EFFECT FIRST RUN PROGRAMS

Tribune Broadcasting is coventuring several first-run offerings with major production companies. This creates opportunities for Hollywood to develop product, for national advertisers to reach consumers, for television stations to exhibit original shows and, most importantly, for the public to have viewing choices. Syndicated Exclusivity would jeopardize all this.

These series are offered to stations nationwide on a barter/syndication basis. This reduces the cash outlay stations normally face and provides them (mostly independents) with fresh programming to attract viewers and enhance their schedules. WGN's extended-reach provides the added coverage that attracts national advertisers while the participating station lineup expands and makes the programming venture sustainable for the long-term. The public receives alternative, new viewing choices.

In general, barter advertisers require 70% national clearance, to take a position in a program. This demonstrates how WGN-TV's extended coverage is important in launching barter/syndication programming efforts.

Nielsen cannot measure WGN alone covering a specific program lineup. However, they are able to delete WGN from a lineup and achieve similar results.

Because they are somewhat similar, both from a general and daypart clearance point of view CHARLES IN CHARGE AND WHAT A COUNTRY are analyzed here. Below are the results:

WEEK ENDING 3/1/87:

	WITH WGN	WITHOUT WGN	RTG. ADVTG.
CHARLES IN CHARGE			
NTI Rtg.	5.8	5.2	+0.6
Coverage	81%	69%	-----
WHAT A COUNTRY!			
NTI Rtg.	5.0	3.7	+1.3
Coverage	78%	65%	----

Major market independents are often transmitted beyond their ADI's by cable and microwave.

Syndicated Exclusivity will significantly reduce their coverage.

These are the stations that often provide over-the-air sports to their regions.

SELECT INDEPENDENT STATIONS
HOUSEHOLD DELIVERY OUTSIDE HOME MARKET
NOVEMBER 1986 NIELSEN
MON-SUN 7A-1A

ACTUAL VIEWING HOUSEHOLDS

TATION	MARKET	(000) NET WEEKLY CIRC.	% OUTSIDE DMA	(000) OUTSIDE DMA
SBK	Boston	2,303,000	30	690,900
XIX	Cincinnati	704,000	27	190,100
UAB	Cleveland	1,213,000	19	230,500
TVT	Dallas	1,863,000	24	447,100
WGN	Denver	1,051,000	18	189,200
KBD	Detroit	1,798,000	16	287,700
TTV	Indianapolis	894,000	21	187,700
KSHB	Kansas City	577,000	28	161,600
KTLA	Los Angeles	4,311,000	9	388,000
KMSP	Minneapolis	1,108,000	16	177,300
WNYW	New York	6,629,000	6	397,700
KTVU	San Francisco	2,288,000	18	411,800
KSTW	Seattle	884,000	11	97,200
KPLR	St. Louis	902,000	12	108,200
WTOG	Tampa	759,000	11	83,500
WTTG	Washington	2,230,000	22	490,600

Source: November 1986 Viewers In Profile Reports.

Monday Memo

A commentary on syndicated exclusivity from Shaun Sheehan, vice president/Washington, Tribune Broadcasting Co

The perils of resurrecting the FCC's syndex rules

The reintroduction of syndicated exclusivity would not only harm Tribune Broadcasting but also other independents and, most certainly, the public.

With superstations WGN-TV Chicago and WPIX(TV) New York in our lineup, our opposition to syndex can be readily understood. How—from our perspective—the public and our fellow independents lose are factors that you may wish to consider.

In programing, Tribune Broadcasting is coventuring several first-run offerings with major production companies. This creates opportunities for Hollywood to develop the product, for national advertisers to reach consumers, for television stations to exhibit original shows and, most important, for the public to have viewing choices. Syndicated exclusivity would jeopardize all this. The following examples illustrate this process.

Tribune Broadcasting through its syndication company, Tribune Entertainment, is coventuring with MCA on *Charles in Charge*, a first-run situation comedy starring Scott Baio. Fifty-two new episodes are in production. CBS originally launched this show but canceled after one season. This co-venture employs the creative community and creates a new avenue for original programing other than through network exposure.

The series is offered to stations nationwide on a barter/syndication basis. This reduces the cash outlay stations normally face and provides them (mostly independents) with fresh programing to attract viewers and enhance their schedules. WGN's extended-reach provides the added coverage that attracts national advertisers while the participating station lineup expands and makes the programing venture sustainable for the long-term.

The public receives alternative, new viewing choices. As of March 1, 1987, *Charles in Charge* was being cleared in 69% of the nation by local stations. WGN's extended coverage elevated the total and crossed the threshold necessary to attract national advertisers to buy the barter.

Further, in markets where the show is broadcast locally and also is available by superstation there is virtually no siphoning of audience by the distant signal. The simple reason is that the local station promotes in the market. A passive superstation such as WGN-TV, which promotes itself as "Chicago's Very Own," does not.

Tribune Entertainment specials are, perhaps, more to the point. *The Mystery of Al Capone's Vaults* was broadcast live nationwide. Every station opting for that special knew that Tribune Broadcasting would air it on superstations WGN-TV and WPIX.

Shaun M. Sheehan is vice president/Washington of Tribune Broadcasting Co. Before joining Tribune in February 1986, he was with the National Association of Broadcasters for seven years, where he served as as senior vice president of public affairs and communications.

Eighty-one affiliates (42 ABC, 22 CBS, 17 NBC) chose to delete their network programing that evening to broadcast the show. One hundred and eighty-one stations cleared the program.

Its ratings success is history. Superstation carriage did not hinder its appeal to local stations, local audiences or local advertisers. WGN's extended coverage was pivotal in attracting those national advertisers up-front to insure the program's viability.

Moreover, the program's ratings on the West Coast where it was broadcast on a delayed basis in most markets, equaled or exceeded its ratings in the rest of the country—despite the news that "there was nothing in the vault" having been reported locally on the West Coast, and the entire program could have been seen hours earlier via the live superstation telecasts.

The overwhelming success of Tribune Entertainment live specials and the ready acceptance of them by savvy network affiliates and independents refute arguments that syndicated exclusivity rules are important. If duplicative programing is harmful, the Capone special should have proved disastrous.

Tribune's experience with barter syndication leads us to the conclusion that this first-run program production system would be seriously jeopardized if syndicated exclusivity rules were put in place. A national advertiser would be unsure as to what extent its program would be blacked out. Total household coverage would inevitably be reduced. Stations, facing a continued cash squeeze, would be forced to pay cash and surrender barter time to make the production deals work. Or, more likely, some new programs simply would not get made. We would all be back to chasing after the limited number of off-network series and movie packages, risking ever-increasing cash license fees.

For many years, regulatory officials encouraged broadcasters to seek avenues for other-than-network delivery of new programing. Syndicated exclusivity would cripple this proved method.

The threat syndex poses to superstations is obvious. Cable operators may find it too expensive and laborious to delete the locally duplicative portions of a superstation's schedule and decide to drop it in favor of another cable service, leaving millions of viewers without familiar Tribune staples including Cubs baseball and prime time news.

Cable systems most likely will replace these channels with cable originated programing that will contain local advertising opportunities for them to sell. WGN does not sell in the local markets of other stations. It will be replaced by an active, local competitor.

Cable also expands the independent station's reach. Cable enables independents to reach their local markets with a premium-quality signal, while giving independents equal access to suburbs, exurbs and even other states via microwave. Most major-market independents—not just superstations—have substantially expanded coverage as a result of cable pickups.

This household coverage can be—and in many cases is—sold to advertisers. The coverage "bonus" provides independents with a distinct advantage over affiliates, which tend to be the favorites of advertisers to begin with.

With syndicated exclusivity, these major-market independents will surrender a distinct advantage. Moreover, these are the independent facilities with the resources to present news, sports and children's fare.

There is a bugaboo that seems to propel the rush to reinstate syndicated exclusivity: the notion that superstation independents are "stealing" local stations' viewers in droves. This is a gross misconception. Superstations have negligible viewership in markets served by established independents. A.C. Nielsen sign-on to sign-off figures from November 1986 show that in the 13 metered markets, all distant stations draw only a 2.6 average rating. Fully 58% of these distant-station viewers are watching adjacent-market affiliates and 15% are watching adjacent market independents. WTBS captures an additional 15%, leaving only 12%—a 0.3 rating—to superstations WGN, WWOR, WPIX, KTVT and the others.

This leads us to conclude that the reimposition of syndex is of no benefit to indepen-

d

dents and for many will prove detrimental.

Similarly, the creative community does not appear to have suffered without the rule. We suspect that under the new regulatory scheme, a station will be required to pay a premium for exclusivity if it so desires. Is it really necessary?

Hollywood, through syndication companies, is fully cognizant of its customers. When Viacom sold *Cosby* to MCA's WWOR New York, at a record price—the first market in which the show was offered—Viacom and MCA were aware of WWOR's superstation reach. In Chicago, the second market bidding on *Cosby*, Fox's WFLD paid a record-setting price as well. In Los Angeles, the third market, *Cosby* again set a record when Chris-Craft's KCOP (with its ownership connection to Warner Communications) purchased the syndication rights. In the 40-plus markets where *Cosby* has been purchased, it has sold on the average for two-and-a-half times the all-time record.

To recap, Viacom could have sold *Cosby* to other stations if it felt the superstation would hinder its marketability. Further, the New York sale should have depressed the price for subsequent markets. In the three largest markets, the show commanded record prices. In all three markets, the program was purchased by stations owned by or with connections to Hollywood companies.

In 1980, syndicated exclusivity was abolished. Since then, the video marketplace has witnessed profound change.

The proliferation of independent stations, the growth of market share achieved by independent stations (garnered from affiliate competition), and the exponential rise in the cost of syndicated programing are among the changes. These facts once again question the supposed harm caused by the absence of syndicated exclusivity.

Ignored as the verbal salvos escalate in this debate is that independent UHF stations have achieved signal parity through cable carriage, while cable has achieved consumer acceptance by marketing a package that includes local broadcast stations. It is about time that this symbiotic relationship is finally acknowledged.

For sake of argument, should not the new technologies be considered in the equation? Television is television. Regardless of the delivery mechanism, success is achieved by attracting viewers. If a station purchases an exclusive movie package, how will exclusivity be invoked against VCR rentals of the same product? How will backyard dishes be regulated? How do you consider a program that is both in syndication and part of a network's prime time schedule such as *Magnum, P.I.*?

How will syndicated exclusivity work? Will a station be able to demand blackouts if a distant station is carrying a program or movie simultaneously? Or will the local station be able to black out the competition if it owns a program but is "resting" it? If it owns a movie but doesn't plan to run it for another year or two?

Clearly, syndicated exclusivity will prove to be a regulatory morass. How will the FCC black out and police Baltimore from Washington, San Diego from Los Angeles, Hartford and Philadelphia from New York, Providence from Boston and numerous other examples as a cursory examination of the U.S. map will reveal.

Who is kidding whom? Programers and syndicators are thriving. Cable and independents are launching new shows. The superstations are not siphoning appreciable audience. Viewers have unprecedented choice. The real-world facts are butting against the FCC's proposed theory. The rule is simply not necessary.

Tribune Broadcasting has witnessed and participated in the growth of the telecommunications industry. It is difficult, however, to chart a future course in this rapidly changing enviroment if the regulatory agency with the authority to establish the ground rules decides to abolish a rule in 1980, not to revisit it in 1984 and to launch a rulemaking to reimpose it in 1987. ■

People-Watching Down at Wrigley

WSJ 9/23/86 p 32 Leisure & Arts

By Frederick C. Klein

On Sports

Chicago Cubs fans

GENERAL ELECTRIC
GENERAL ELECTRIC COMPANY
570 LEXINGTON AVENUE
NEW YORK, NEW YORK 10022-6853

FRANCIS J. DeROSA
STAFF VICE PRESIDENT
AND GROUP COUNSEL

Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts
Civil Liberties & The Administration
of Justice
Committee on the Judiciary
2137 Rayburn Building
Washington, D.C. 20515-6219

Re: H.R. 2848

Dear Chairman Kastenmeier: December 23, 1987

GE Communications and Services (GEC&S) would like you to clarify that the licensing provisions of H.R. 2848 does not apply to communications satellite operators. Among the operating components of GEC&S is GE American Communications, a pioneer in communications satellite technology and marketing, which distributes television signals, including those of superstations. We are concerned that an ambiguity in H.R. 2848 may make such satellite operators, rather than the entities that uplink superstation transmissions to them, would become the licensees under the bill.

Section 119(a) provides, in pertinent part, that:

> secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing if the secondary transmission is made by a satellite carrier to the public for private viewing, and the carrier makes a direct charge for such retransmission service to each subscriber that receiving the secondary transmission ... that has contracted with the carrier for direct or indirect delivery of the secondary transmission ....

While this appears reasonably clear that the transmissions that must be licensed are only those that involve situations where "the carrier" makes a "direct charge" for private viewing of a secondary superstation transmission, the definition of "satellite carrier," in subsection (d)(6), would include any:

> common carrier that is licensed by the Federal Communications Commission to establish and operate a channel of communications for point-to-multipoint distribution.

GE American Communications is a "common carrier licensed by the Federal Communications Commission ... to operate a channel of communications for point-to-multipoint distribution of signals, including television signals. We also "own" and "lease" transponders on our seven in-orbit satellites in order to provide point-to-multipoint distribution.

But, unlike the entities that uplink television signals to these satellites, we do not encrypt these or in fact know whether they are encrypted, much less know how many home satellite users are receiving these signals. For this reason, it would be unfair to require us to be licensed or subject us to patent infringement and even criminal liability if we are not.

Based on your statements in introducing this legislation, GECA8 is confident that we are not the entities you had in mind to be licensed under H.R. 2848. Therefore, we request that you exclude from the definition of "satellite carrier" any common carrier that has been licensed by the FCC to construct, launch and operate a satellite.

Sincerely yours,

Francis J. DeRosa

cc: All subcommittee members

JOHN HILER
Third District, Indiana

Committees:
Banking, Finance and
Urban Affairs

Small Business

Washington Office:
407 Cannon House Office Building
Washington, DC 20515
[illegible]

District Office:
[illegible] Office Plaza
501 East Monroe Street, Room 130
South Bend, IN 46601
[illegible]
Toll Free 1 [illegible]

Congress of the United States
House of Representatives
Washington, DC 20515

January 26, 1988

The Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties,
and the Administration of Justice
2137 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Kastenmeier:

I am contacting your office to bring to your attention the concerns of satellite dish owners in my Third District regarding HR 2848, the Satellite Homeviewer Copyright Act of 1987. I am aware that last October, the K-SAT Broadcasting Company, which represents the interests of satellite dish owners in my District and across the country, sent a letter to you recommending that changes be made to the bill. The purpose of my writing at this time is to focus attention on the eight points brought up in the K-SAT letter.

Firstly, these K-SAT supporters are supportive of parity for copyright payments — a home owner with both cable and satellite TV should not be expected to pay a higher tariff for owning a dish. This group also favors parity program payments — the price that program suppliers charge dish owners for the same product being supplied to cable subscribers. Along these lines, they would be opposed to a sunset on copyright payments.

Further, these satellite dish owners oppose limitations that would restrict competition in the area of new satellite services. They also oppose a copyright formula that would require a "ten percent cable penetration" and adversely impact the satellite dish industry, and they favor non-discriminatory marketing provisions for TVRO owners.

The dish owners that have contacted me would also like to see a final bill crafted that would allow all licensed broadcasters to have open availability to up link a satellite signal. Finally, they would like to see that the legislation guarantees access to all long distance satellite programming.

Thank you for allowing me to bring these points to your attention, and should you take up HR 2848 in the Second Session, I would appreciate if you would give full consideration to the interests of satellite dish owners in my Third District. If I can be of any assistance to you, or answer any questions, please do not hesitate to be in touch.

Sincerely,

JOHN HILER

JH/jek

TESTIMONY OF CHET GROCHOSKI
ON BEHALF OF THE
AMWAY CORPORATION
CONCERNING
THE SATELLITE HOME VIEWER COPYRIGHT ACT OF 1987, H.R. 2848,
BEFORE
THE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES
AND
THE ADMINISTRATION OF JUSTICE OF
THE HOUSE COMMITTEE ON THE JUDICIARY
JANUARY 27, 1988

Of Counsel:

Brown, Finn & Nietert, Chartered
1920 N Street, N.W., Suite 510
Washington, D.C. 20036
(202) 887-0600

Testimony of Chet Grochoski

Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to present the views of Amway Corporation ("Amway") before the Subcommittee on the issue of the delivery of television signals of broadcast television stations to home satellite earth station owners. Amway is a non-cable distributor of programming to home satellite dish consumers. As I shall more fully discuss, Amway believes that H.R. 2848 addresses a critical issue to American consumers. The Committee has done an excellent job in drafting legislation to accommodate disparate views of many industries. We believe that widespread service to the public at reasonable prices, along with fair compensation to the copyright holder, are the appropriate benchmarks.

Amway is the second largest direct selling company in the world with 1987 sales reaching 1.5 billion dollars. Amway employs 7,000 people worldwide of which 5,000 are in the United States. There are over 1 million independent Amway distributorships worldwide. Amway's headquarters occupies 3.5 million square feet in Ada, Michigan, and it operates seven regional distribution centers in North America, as well.

Amway believed that with its large sales force and experience and expertise in selling products and services to a large consumer base, it would be quite an appealing distributor for satellite television programmers. It more than mirrors the distribution base that the programmers are accustomed to utilizing. That is, programmers are accustomed to having a large distribution base of cable operators selling programming. Amway presents a much larger distribution network than cable, a network that reaches into areas where cable has not yet penetrated — specifically those rural areas where dishes are prevalent. In addition, it is financially qualified. Thus, Amway assumed it might even be considered by some programmers as the ideal distribution source. Amway believed it would attract as suppliers substantially all, if not all, of the satellite programmers and common carriers. It was wrong. Amway has only two distribution contracts in effect. And only one of these is with a programmer that has a cable TV customer base. Despite intensive negotiations with all the major satellite carriers, Amway has been refused service entirely or has been refused service at anything close to the prevailing price offered to cable systems for their distribution to cable subscribers.

Legislation on this matter is welcomed and necessary. The question of access to satellite television signals has been one that has been an issue since the very beginning of home earth station technology in the late 1970s and early 1980s. In 1984, the Congress passed an amendment to the Communications Act, S705(b), which provided for a right of access to unencrypted satellite television signals. That legislation did not consider, however, the issue of access to, and fair distribution of, encrypted signals. Those questions are before the House and the Senate in a variety of legislative initiatives (H.R. 1885 and S. 889) dealing with both the right of access and the distribution of programming as a communications matter.

The question of copyright payments for the scrambled signals of broadcast signals is not addressed in those initiatives. Receipt of broadcast signals by dish owners — as well as by cable systems — requires different consideration than the receipt of other signals, primarily because broadcasters are passive originators of the programming outside of their service areas, the receipt of which is controlled by carriers and cable systems.

Scrambling of the superstations by the various carriers may deny the programming of these stations to home earth station consumers. While we believe that the right of the carrier to scramble under present law is unclear, once a signal is scrambled it is also not certain whether these signals can be marketed to home earth station users without violation of the present Copyright Law. There are two pending lawsuits on this issue. If they are decided adversely to dish owners, it could result in a denial of service to millions of Americans. That is a principal reason why legislation is needed.

Amway believes that H.R. 2848 takes into account many items of interest to all concerned parties in order to achieve an open marketplace involving competition in the delivery of programming to the home. In order for this to be fully and fairly accomplished, a few additional objectives should be met. While we have a "wish list" of over a dozen possible amendments, we present here the few we consider very important and, to assist the Committee, we have prioritized these concerns.

Access and Distribution

First, a common carrier should be affirmatively required to provide to dish owners and distributors the signal of any superstation it carries. Recently, cable controlled services or proposed services such as Festival and Turner Network Television (TNT) have announced they do not intend to serve dish owners. The fear that future services will refuse to deal with dish owners is magnified now that TCI, the nations largest cable television company, has announced its intention to acquire Tempo Enterprises Inc., which owns the carrier of the most widely viewed superstation WTBS. The evidence of failure to deal by carriers is mounting.

Amway Corporation first requested the signal of WOR-TV from Eastern Microwave, Inc. (EMI) in December of 1986 — over a year ago. In October of 1987, after the signal of WOR-TV was scrambled and a distribution agreement was reached between EMI and United Video, we wrote to EMI again, requesting service. In a followup conversation, EMI indicated that it also reached a deal with Tempo Development Corporation for distribution and that Amway could buy the programming (at a multiple of the cable price) and that a contract would be forthcoming. Amway wrote again on October 21, 1987 seeking an agreement. On January 8, 1988, I was informed in a telephone conversation, that EMI had no plans to expand their distribution beyond Tempo and United.

Similarly, we have been negotiating with the Superstar Connection and United Video since 1986 with no tangible results.

Our negotiations with Southern Satellite Systems, Inc. (SSS) are also noteworthy. SSS is apparently owned by Tempo Enterprises, Inc., which will soon be owned by Tele-Communications, Inc. (TCI). SSS distributes to dish consumers through another subsidiary of Tempo Enterprises, Inc., called Tempo Development Corporation. SSS tells us that it sells only to "the single eligible class of customers, the TVRO subscriber." In order to receive the programming, we have to buy it as a commissioned agent, just as Tempo Development does. At the same time, Tempo Development is negotiating with Amway to sell it the same programming as offered by SSS but is quoting more liberal non-price terms and conditions.

It should be clear from all this that carriers intend to be in the distribution business, themselves. Their role as carriers will virtually disappear. They are becoming programmers — just like HBO and Cable News Network or ESPN. As such, they are and will discriminate against non-cable distributors such as Amway Corporation and NRTC.

According to SSS' tariff on file at the FCC, it charges cable systems $.10 per subscriber with a maximum of $1,875 per month. A large system would thus pay 2 or 3 cents per month per subscriber. The quotation to us is $11.00 per year or $.92 cents per subscriber -- nine to forty times greater than the cable price.

Duty to Deal

Proposed Section 119(a)(1) provides a compulsory license for transmission of signals for dish owners through the "private viewing" clause. However, nothing specifically requires, for example, that EMI actually make the scrambled signal of WOR-TV available to dish owners or distributors. It might be implied that Section 119(a)(4) creates such a mandate. But Section 119(a)(4) merely prohibits discrimination "against any distributor in a manner which violates the Communications Act of 1934 or rules issued by the

Federal Communications Commission with respect to discrimination." The Communications Act provisions on discrimination are found in Section 202 of the Communications Act while the provisions of the Communications Act concerning a "duty to deal" are found in proposed Section 201 of the Communications Act. Section 201 is not referenced in Section 119(1)(4) of H.R. 2848. It is essential that an affirmative duty to deal — to sell programming to dish users and distributors — be included in the Copyright Act in order that there will be no confusion on this issue.

Within the context of a mandatory duty to deal, carriers should be specifically required to provide service to companies as well as to persons or entities that are not affiliated with cable systems, such as Amway Corporation and NRTC, for the further distribution of these signals to home earth station users. This will ensure competitive prices to the consumer.

Price Discrimination

As described above, consumers and distributors are presently being asked by carriers and their captive distribution arms to pay prices hundreds of percent higher than currently are paid for cable subscribers. It is inconceivable that the intention of this legislation is for carriers to make windfall profits. The provisions of Section 119 (a)(4), making it an act of infringement to discriminate against a distributor in a manner which violates the Communications Act of 1934, or FCC Rules in that regard, is woefully inadequate. The Communications Act and FCC Rules do not contemplate a situation where the carriers play such a dominant role as both a carrier and a marketeer. The legislation should make it clear that the carriers cannot discriminate (other than for volume discounts) between the charges (1) to cable systems for their cable subscribers and (2) to satellite carrier customers including distributors for private viewing for service to their subscribers. Without such a provision, the price for programming will remain extraordinarily high. In fact, the amount of the copyright fee, itself, would be an irrelevancy compared to the distribution charge. If the carrier must no longer be passive, it must be made to be responsible.

Pass Through

Because the 12-cents-per-month charge for copyright payment reflects an estimated parity with the charge the cable operator pays for copyright, on a per-subscriber-basis, then this copyright charge should be passed through (without mark-up) by the carrier to customers including distributors. Discrimination in distribution fees might be extremely difficult to determine if the copyright fee were not directly passed through and accounted for in carrier billing to distributors. To permit the combining of copyright and distribution fees would, in essence, allow carriers, not the Congress, to establish Copyright fees.

Clarification With Respect to Liability of Distributors

Section 111 is amended by the Bill by adding clause (4) that states that the provisions of Section 119 extend only to the activities of a "satellite carrier" with respect to secondary transmissions "for private viewing pursuant to a compulsory license under Section 119."

Because cable and non-cable distributors may be engaged in the process of the distribution of programming pursuant to the terms of Section 119, it should be made clear that such distributors are not making unlawful secondary transmissions by virtue of their activities in serving satellite dish owners.

Arbitration

The provisions of Section 119(c)(3)(D) establish standards to be considered by the Arbitration Panel. Clause (iii) calls for a determination of the relative roles of the copyright owner and the copyright user "in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk and contribution to the opening of the new markets for creative expression and media for their communication." It should be made clear that the copyright user in this case would be deemed to include the satellite television industry including manufacturers, distributors and retailers, all of which make significant contributions to the process of making copyrighted materials available to the public.

Eclipse and Sunset Provision

Pursuant to proposed Section 119(c), the legislation will eclipse in four years and sunset in eight years. Presumably this means that Congress believes the problem will be greatly ameliorated soon and in eight years, it no longer will exist. We would urge, instead, however, that the legislation continue in effect without specific eclipse or sunset. If Congress wishes to amend the statute at any time to delete the compulsory license it can of course do so. At the very least, the eclipse periods should be doubled in time. We believe this request to be moderate in light of the fact that the formerly "infant" cable industry, now forty years old, has enjoyed the compulsory license for the last twelve years. Under this proposal, we would be required to negotiate in the marketplace after only eight years and would have the supervisory power of the Tribunal for another four, resulting in the same 12-year period presently enjoyed by cable.

Do Not Limit Choice

Proposed Section 119(d)(9)(A)(B) limits the number of broadcast stations available to home dish owners to those signals obtaining 10 percent of the cable viewing audience or those on the air by June 1, 1987. It is unfair to make the future opportunity for viewing of broadcast signals by means of home satellite antennas depend upon how many cable subscribers happen to choose to view a particular service. The effect of such a provision would be to consign home dish viewing opportunities to what cable subscribers, or more realistically what cable companies, believe is important. Relatively speaking, satellite dishes — not cable — represent the medium of abundance and choice. As cable systems drop broadcast signals in an era of relaxed or non-existant mandatory carriage, and as they restructure their tiers of programming to take advantage of copyright law decisions, the consumer is often denied programming — and the copyright holders are denied compensation. Satellite dishes obviate the need for such juggling. Potential entrepreneurs wishing to bring increased broadcast signals to dish owners should not be required to serve 10 percent of cable homes first. Consumers and copyright holders are better off with increased distribution and payment.

Other Matters

We would like to address proposed Section 119(b)(1)(B) which establishes a payment of $ .12 per month per signal. We recognize that many in the earth station arena suggest an alternative to this approach: that the average fee paid for dish distribution corresponds to the average fee for cable distribution on a per-subscriber basis. We would support such an amendment. However, we also recognize that certainty exists with a fixed payment as provided for in the legislation. What is more important is that carriers not be permitted to create their own non-statutory copyright fees by abusing their status as carriers and charge discriminatory rates, as previously discussed.

Conclusion

We request that the Subcommittee favorably consider the suggested amendments prior to marking up HR 2848.

Finally, we thank the Chairman and the Subcommittee members for their leadership and insight in these matters.

National Association of
NAB
BROADCASTERS

Edward O. Fritts

President & CEO
1771 N Street, N.W.
Washington, D.C. 20036
(202) 429-5444
Telex: 350-085

January 28, 1988

The Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties,
  and the Administration of Justice
U.S. House of Representatives
2137 Rayburn House Office Building
Washhngton, DC 20515

Dear Chairman Kastenmeier:

The National Association of Broadcasters (NAB) appreciates the opportunity to provide, for the record, our comments regarding H.R. 2848, the Satellite Home Viewer Copyright Act of 1987. N.A.B. stands with you and the cosponsors of H.R. 2848 in support of the goal of providing over-the-air broadcast service to those who receive no such service or only minimal service, because they reside outside the reach of signals of local broadcasters and there is no cable service available. While that is a worthy public policy goal, N.A.B. is deeply concerned that H.R. 2848 in its current form fails to balance that goal with other necessary and historic communications policies.

Faced with a highly competitive marketplace and on-rushing technology, local broadcasters are convinced that viewers will best be served in a competitive market place in which the competitors are treated equally. As you know, N.A.B. views the compulsory license as an extraordinary copyright tool. We have generally supported the principle that all who seek to display a public performance do so by competing in the marketplace for such rights.

The basis of the broadcast industry is service to local communities. It is the reason why licenses are granted and renewed. Television broadcasters provide free service to the viewers of this nation. Revenues for television broadcasters are obtained from the sale of advertising time, based on the number of viewers of a given program. There is a direct link between our business operation, the sale of advertising time and our public service responsibilities.

As I stated before the N.A.B. has supported proposals which would extend terrestrial broadcast service to "white areas," defined as those geographic areas of the nation that are beyond reach of local broadcast signals as normally transmitted and outside of cable service areas. There is no disagreement that white area residents should receive terrestrial broadcast service. However, the current form of H.R. 2848 allows for the retransmission of broadcast signals to any location in the U.S., even those areas that currently receive an abundance of broadcast signals.

Therefore, N.A.B. recommends that H.R. 2848 be amended so that the benefits of a compulsory license are conferred only when broadcast signals are retransmitted to geographic white area residents. In geographic areas which are not designated as white areas, the retransmission price for rights should be set by marketplace rates and practices, since there is no overriding public policy interest in conferring this enormous copyright benefit where competition already exists.

As stated earlier, a compulsory license is an extraordinary benefit under copyright law. It should be used sparingly and only when there is no alternative to promote significant public policy goals. N.A.B. does not support the grant of a compulsory license that will supercede or take precedence over other accepted copyright agreements. Where the government confers a benefit under copyright law, the negotiated agreement still should be relied upon and honored to the maximum extent possible.

Broadcasters negotiate for the right to air exclusively programming in their service area. We always have paid a premium price for these exclusive rights. Problems arise with H.R. 2848 when a signal that includes a particular program or series of programs is retransmitted by satellite into the area served by the local broadcaster, who has negotiated for and paid for the "exclusive rights" to air that very program or series of programs. Whereas the local broadcaster paid a premium price for exclusive rights, the government conferred right (the compulsory license) is at a bargain basement rate, with which the local broadcaster cannot compete. This creates an anomalous situation in which the accepted and preferred means of obtaining a copyright license -- marketplace negotiations -- are superceded by the government with no perceptible public policy justification for doing so.

This turn of events is even more anomalous when you consider that those currently deemed "passive carriers" who are the beneficiaries of this bill are the same business concerns who benefit from the original grant of government largess under the cable compulsory license. It is reasonable to assume that these business interests are prospering due to the expanded customer base of cable television. Yet H.R. 2848 would grant a second benefit under copyright law, which would turn our method of copyright licensing of video programs on its ear unless it is amended.

Therefore, N.A.B. recommends that the Subcommittee amend H.R. 2848 so that the integrity of programming licensing contracts is protected. The need for "network non-duplication" and "syndicated exclusivity" is clear. Such action will restore a fair and equitable marketplace. Further, it correctly places the order of priority in obtaining copyright licenses where it belongs -- one should always proceed in the marketplace first.

The need for this change is even more acute as one examines the emerging technological landscape. The size of the receiving "dish" a home owner can buy will shrink dramatically. It will not be the giant parabolic dish suitable only for the yard, but a much smaller flat devise capable of reception from inside the home. These flat antennas are being sold in Japan today, and will be marketed in this country as soon as higher-powered satellites are available for retransmission of video signals. The impending proliferation of these smaller sized and less expensive dishes clearly make it essential to balance all interests by promoting a marketplace solution where possible. Inclusion of network non-duplication and syndicated exclusivity will ensure that consumers will receive greater program choices, and that all competing services will operate in a fair and equitable marketplace.

With the recent loss of must carry protection, N.A.B. believes that a larger examination of the copyright practices in the video marketplace should take place. However, it is not our intent to seek postponement of consideration of H.R. 2848. We stand ready to discuss with you, your colleagues and staff the changes we have recommended, as well as and these new, larger questions.

We appreciate your consideration of these comments and we look forward to working with you in the future.

Sincerely,

Eddie Fritts

STATEMENT OF A. PHILIP CORVO
EXECUTIVE DIRECTOR,
NATPE INTERNATIONAL

NATPE International ("NATPE") submits this Statement in opposition to H.R. 2848, a bill to amend the copyright laws to provide interim statutory licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station owners. In its present form, H.R. 2848 raises serious issues of potential concern to NAPTE because it grants a temporary statutory licensing preference to satellite carriers while further eroding the concept of exclusive program contracts which appropriately exist between programmers and broadcasters. The ability to negotiate contractual rights between the vast programming and broadcast industries creates the basis for the vigorous, competitive broadcasting industry we enjoy today in the U.S., and directly contributes to the robust diversity of ideas and opinion that emanate from the U.S. entertainment industry of which NAPTE is a leading force.

NATPE is a diverse domestic and international organization composed of 1,700 station managers, program directors, group broadcast owners, cable network executives, local cable channels, syndicators and distributors. NATPE's members make the day-to-day programming decisions for network owned and affiliated stations, independent commercial stations, religious, educational and public television stations, and many cable systems. NATPE members collectively develop the seemingly unlimited programming product that fills television channels across this country and throughout the emerging broadcast markets of the developed and developing worlds. As such, the organization seeks to promote production and distribution of quality, diverse programming in our robust domestic and growing international marketplaces.

Unlike many other industry organizations, NATPE represents the individual programmers who negotiate for and purchase syndicated programming in the broadcast marketplace; for this reason, NATPE has a special appreciation for the dynamics of the syndication marketplace and the importance of exclusive contracts. NATPE members have witnessed firsthand how regulatory, industry and technological changes during the last decade have affected broadcasters' ability to present quality programming to viewers.

The focus of H.R. 2848 on the satellite carrier's transmission of superstations for private viewing, while seemingly narrow, is actually quite broad. As the term "superstation" is defined in the bill, it would include any network affiliate and/or independent television stations which were, inter alia, secondarily transmitted by a satellite carrier for nationwide distribution on June 1, 1987. While NATPE agrees that there should be no distinction made between a network affiliate and an independent station in the bill, practical application of this broad definition of superstation indicates a serious misunderstanding of how the broadcast/programming marketplace actually operates.

NATPE members purchase all of their programming in the open marketplace by negotiating program license fees with syndicators and distributors; NATPE members do not have the benefit of economic protection conferred by a government-created statutory licensing scheme. If this legislation were enacted, it would create a serious imbalance in favor of satellite carriers to the detriment of both the programming and broadcasting industries. This contrast is most apparent in a review of recent trade press documenting the escalating cost of programming which NATPE members encounter in their efforts to bring quality, _free_ programming to the viewing public.

For example, syndication rights to the re-runs of _The Cosby Show_ alone have cost television stations between $200,000 to in excess of $300,000 per episode in certain major markets. In contrast, a satellite carrier which retransmits a station which has paid this exhorbitant program license fee for _The Cosby Show_ will receive extraordinary protection in the form of only being required to pay 12 cents per month per subscriber under the provisions of H.R. 2848. This potential economic disparity is unfair and must be redressed.

While the ostensible and laudable purpose of H.R. 2848 is to provide free over-the-air broadcasting to "white areas" which do not receive terrestrial broadcast signals, as presently drafted, H.R. 2848 extends a statutory license for the performance of copyrighted work not only to rural area subscribers but also to urban residents who have ready access to local terrestrial broadcast signals. This overly broad, and perhaps unintended, effect of H.R. 2848 would serve to severely undercut the ability of NATPE members to freely negotiate exclusive program license agreements. It ultimately could wreak havoc to the orderly, robust programmer/broadcaster marketplace.

For this reason, NATPE urges the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice to limit the focus and impact of H.R. 2848 to permit satellite carrier transmission of superstations for private viewing by rural residents in "white areas," and not to any and all urban residents who are adequately served by local television stations.

GTE

[illegible]
Director
Government Affairs

GTE Spacenet Corporation
1700 Old Meadow Road
McLean, Virginia 22102
[illegible]

February 1, 1988

Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts
Civil Liberties & the Administration
of Justice
Committee on the Judiciary
2137 Rayburn Building
Washington, D.C. 20515-6219

Re: H.R. 2848

Dear Chairman Kastenmeier:

This letter is with regard to H.R. 2848, the "Satellite Home Viewer Copyright Act of 1987", which proposes to require copyright licensing of various entities engaged in distributing secondary transmissions of video programming. In the bill these entities are referred to as "satellite carriers." GTE Spacenet is requesting that the inadvertant inclusion of satellite transmission suppliers in the bill's definition of "satellite carrier" be corrected.

GTE Spacenet is engaged in the business of providing satellite transmission services to a wide variety of customers for voice, video and data applications. We are licensed as a common carrier by the Federal Communications Commission to provide such services and must do so on a non-discriminatory basis. Moreover, pursuant to FCC regulations, we cannot prevent resale of our service, and thus, may in some cases be unaware of program material which may be distributed over our facilities.

The purpose of H.R. 2848 appears to be to provide for compulsory licensing of those entities which are redistributing primary broadcast transmissions for a fee. Those entities are almost always "program distributors," not the satellite operator whose transmission facilities are being utilized. Moreover, the entities intended to be subject to licensing may or may not be common carriers. The Bill should be clarified so that the parties to be subject to licensing are defined appropriately.

Because your intent in introducing this legislation was to provide for copyright liability on the part of the parties directly benefitting from the retransmission of over-the-air program material, not the satellite transmission supplier, we are confident that you will want to make the necessary revisions to ensure that goal is achieved and that confusion is eliminated as to the parties subject to the licensing requirement. We will be pleased to work with your staff to develop appropriate language to achieve this objective.

Sincerely yours,

Leslie A. Taylor

Leslie A. Taylor

Attachment

cc: All subcommittee members

LAW OFFICES OF
KENKEL, BARNARD & EDMUNDSON
SUITE 202 • 1220 NINETEENTH STREET, N.W. • WASHINGTON, D.C. 20036 • (202) 659-4400

JOHN B. KENKEL
JAMES K. EDMUNDSON
WILLIAM H. BARNARD
MARK VAN BERGH
MARK J. PALCHICK
MARSHA J. MACBRIDE

TELECOPIER
(202) 778-0338

February 3, 1988

Hon. Robert W. Kastenmeier
U.S. House of Representatives
2328 Rayburn House Office Building
Washington, D.C. 20515

In re: H.R. 2848

Dear Chairman Kastenmeier:

This firm represents TVX Broadcast Group, Inc., which is the FCC licensee of twelve independent television stations (eleven of them UHF facilities). The purpose of this letter is to support the position taken by the Association of Independent Television Stations (INTV) on H.R. 2848 and to supplement the data provided in Preston Padden's February 2, 1988 letter to you.

As you may be aware, independent television stations rely on the purchase of copyright protected programming from national program distributors for nearly all of their non-locally produced programming. A major problem facing the independent television industry in the past few years has been the high cost of such programming. It is widely believed that escalating programming costs have been responsible for relatively poor economic performance by a number of independents and even the failure of a few stations. It is important, then, that such stations receive the full copyright rights and protection that they bargain for when they purchase such programming.

Independent stations typically purchase exclusive program rights for their market area (i.e., the area in which their signal is available off-the-air to television viewers). As pointed out in Mr. Padden's letter to you, network affiliated stations obtain non-duplication protection under FCC rules so that cable systems operating within a market may not duplicate a local affiliate's network programming. Previously, such protection was also provided to independent stations' programming under the FCC's syndicated exclusivity rule (the so-called "syndex" rule). However, the FCC eliminated the syndex rule in 1980.

Lack of syndex protection, when coupled with the effect of the present compulsory copyright license available to cable systems, has resulted in the anomalous and unfair result that local independent stations are unable to obtain effective copyright protection for their programs, while cable operators obtain the right to duplicate such programming at far less cost than independent stations pay for the same programming. Attached hereto are Comments filed by TVX in the FCC's current rule making proceeding to determine whether syndex rules should be re-introduced. The data supplied with the TVX Comments clearly shows that cable operators are obtaining programming under their compulsory license at a fraction of the cost paid by television licensees for their supposed exclusive market rights.

While TVX does hope that the FCC will re-introduce syndex rules, it is obvious that part of the problem is the inherent unfairness of the current compulsory license scheme. We hope that the data supplied herewith will be helpful to the Subcommittee. Please do not hesitate to call on us if we can provide additional information.

Sincerely,

WILLIAM M. BARNARD

WMB/sls
Enclosure
cc with enclosure: Michael Remington, Esquire
Thomas Mooney, Esquire

Regency Plaza One
Suite 600
4643 S. Ulster Street
Denver, Colorado 80237

Terminal Annex
Post Office Box 5630
Denver, Colorado 80217
(303) 721-5500

TELE-COMMUNICATIONS, INC.

Robert Thomson
Vice President
Government Affairs

February 4, 1988

The Hon. Robert W. Kastenmeier, Chairman
Subcommittee on Courts, Civil Liberties and
the Administration of Justice
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Kastenmeier:

On January 27, 1988, at your Subcommittee's hearing on H.R. 2848, Mr. Bob Phillips, CEO of the National Rural Telecommunications Cooperative, made a number of misstatements about Tele-Communications, Inc. which require clarification. To that end, I am submitting the following information, and I would like to request that it be included in the hearing record if that is possible.

First, and most basic, Mr. Phillips stated that my company and other cable companies have been trying to stifle development of the home dish industry because it represents a delivery system competitive to cable. In fact, TCI does not view satellite dish technology as competitive to cable for a number of reasons that do not need explanation here. Instead, we view the satellite dish as an ideal way for us to reach customers beyond the bounds of our cable systems. There are many millions of primarily rural families that can never be economically served by cable. TCI hopes all of them visit their local equipment dealers, buy dishes and decoders and buy programming from one of several sources now available, but preferably from us if they are in our service area.

Second, Mr. Phillips suggested that cable operators are monopolizing service to home dish owners. If that were so, we would be doing a very poor job of it. Currently, our estimates are that only five percent (5%) of TVRO programming sales are made by cable operators. Over 50 percent (50%) are made by equipment manufacturers and distributors. Thirty percent (30%) are made by equipment retail dealers. The remaining fifteen percent (15%) are made by all others, such as the programmers themselves and other packagers.

Most of these sales are now being made under agency arrangements, as opposed to wholesale-retail relationships. However, the commissions paid to all these agents are, in most cases, more than the margins now available to traditional retailers in this very competitive marketplace. Moreover, the agent has the name and address of the customer to approach on renewal to earn another commission.

Third, Mr. Phillips stated that programmers have granted TCI and other cable companies exclusive rights to sell to home dishowners in their franchise areas and surrounding counties. TCI has no exclusivity whatsoever in surrounding counties, and even in those few instances in which programmers have granted us a degree of exclusivity in our franchise areas, packagers are making sales anyway as agents of the programmers. In fact, equipment manufacturers, distributors, dish dealers, other packagers and the programmers themselves, who, incidentally are our own wholesalers, are all selling programming in our service areas, and, I might add, they are doing so very successfully.

Fourth, Mr. Phillips implied that TCI had prevented its affiliated company, Netlink USA, from granting rights to the NRTC to distribute Netlink programming. As Mr. Phillips has been told - repeatedly - Netlink is unable to consider such requests until it knows the terms and conditions under which the networks will allow it to distribute their programming. As Netlink testified at your hearing, It has yet to conclude negotiations with any of the networks.

While it is true Netlink approached NRTC in March of last year about a distribution arrangement, that was before Netlink made a business decision to seek agreements with the networks to offer a "white area" service only.

Finally, I would like to address Mr. Phillips suggestion that those of us who have made programming investments should be required by force of law to allow our competition to sell that programming. TCI and its partners have spent almost $5 million to develop services to be offered by Netlink, the most important of which is the network "white area" program. While it may be in our best interests to allow our competition, such as the NRTC, to sell that work product, we also reserve the right not to do so. And we strongly resent any suggestion by Mr. Phillips that we should be forced to do so by law.

As the Chairman noted in the January 27 hearing, the NRTC already has a good array of programming to offer its subscribers. In fact, Mr. Phillips claims in his written testimony that the NRTC sold 5994 subscriptions to its present package in a single month. Because of market area restrictions, that is as many home dish owner subscriptions as TCI has sold in its two years of operation in this marketplace.

Mr. Phillips hardly needs the help of Congress to pick the pockets of his competition. He and his colleagues are managing quite well by themselves.

Sincerely Yours,

Robert Thomson

March 16, 19[illegible]

SATELLITE COUNTRY

[illegible] 7TH STREET • LAS VEGAS, NEW MEXICO 87701 • [illegible]

Congressman Robert W. Kastenmeier
Chairman, Courts, Civil Liberties
and Administration of Justice
2328 Rayburn House Office Bldg.
Washington, DC 20515

Re: Non-discriminatory regulations for common carriers and copyright

Dear Sir:

Again, we would like to thank you and your staff for your leadership role in trying to get positive legislation for the signal delivery industry.

HR 2848 was intended to provide the much needed re-visit to the Common Carrier Act and Copyright Act. Unfortunately, the 'facts' used to substantiate the language in the bill as presently written were introduced through organizations such as the FCC and NCTA. These organizations have been primarily interested in protecting the cable interests to the detriment of original copyright holders, independent broadcasters and the average small retailer and consumer.

Your personal remarks to Mr. Chuck Dawson of K-Sat Broadcasting after the informative hearings your committee recently held on this subject were most welcome. Your affirmation that the claim of protecting local affiliates didn't make such sense in light of your personal experience was most pertinent. The real experience of anyone with more than one affiliate (not all locally originated) from both cable and over the air broadcasts is the very type of fact that has been ignored by the proponents of discriminatory legislation. If the cable companies and broadcasters can bring in and show non-legal broadcast programming then why can't these signals be available to earth station owners via satellite dishes?

HR 2848 may easily reflect non-discriminatory practices by indluding the phrase "delivery of the signal without conditions". This competitive, parity in pricing phrase will go a long way in instituting your stated intention of providing positive legislation in the signal delivery business.

We truly appriciate the enormous investment of time and energy you all have invested on behalf of the citizen's access to parity in pricing and choice of signal delivery method while balancing the rights of the original copyright holders. We encourage you to continue these efforts.

Respectfully, Bill Nobles

National Telephone Cooperative Association

[illegible] Pennsylvania Ave., N.W.
Washington, D.C. [illegible]
[illegible]

May 6, 1988

The Honorable Robert W. Kastenmeier
Chairman
House Judiciary Subcommittee on Courts,
  Civil Liberties and the Administration
  of Justice
2137 Rayburn House Office Building
Washington, D. C. 20515

Dear Chairman Kastenmeier:

The National Telephone Cooperative Association (NTCA), supports and encourages the prompt passage of H.R. 2848, the "Satellite Home Viewer Copyright Act of 1988." We also support any amendment to this bill which prohibits price discrimination in the delivery of superstation signals.

NTCA is a national trade association representing 450 small telephone systems throughout rural America. Many of our members are dishowners and are members of the National Rural Telecommunications Cooperative (NRTC). Our goal is to provide quality telecommunications services to the more sparsely populated areas of the country.

NRTC has negotiated contracts for superstation signals and was required to pay higher prices for such signals than cable companies, even though there was no additional cost to the superstation carrier for providing the signals to rural consumers. They have also been denied signals from some distributors.

NTCA has long been concerned about rural dishowners' access to satellite programming at reasonable costs. The proposed non-discrimination amendment would give a distributor, such as NRTC, the right to take a signal carrier to court if the prices charged were discriminatory. The non-discrimination amendment would mitigate against signal delivery pricing and we urge you to incorporate it into the bill.

Sincerely,

Michael E. Brunner

Michael E. Brunner
Executive Vice President

cc: Members of the subcommittee

J. ROY ROWLAND
8TH DISTRICT, GEORGIA

COMMITTEES
PUBLIC WORKS AND TRANSPORTATION
VETERANS AFFAIRS
SELECT COMMITTEE ON
CHILDREN, YOUTH AND FAMILIES
WASHINGTON OFFICE
[illegible] CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) [illegible]

Congreſs of the United States
House of Representatives
Washington, DC 20515

DISTRICT OFFICES
POST OFFICE BOX 2047
DUBLIN, GA 31040
(912) 275-0024

POST OFFICE BOX 6250
MACON, GA 31208
(912) 743-0150

ROOM 118, FEDERAL BUILDING
WAYCROSS, GA 31501
(912) 285-0430

April 6, 1988

The Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties,
 and the Administration of Justice
2137 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Recently, satellite dish owners in my district contacted me regarding H.R. 2848, the Satellite Homeviewer Copyright Act of 1987.

Having learned that your subcommittee has scheduled a tentative markup on this bill on April 13, my constituents have asked that I bring their concerns to your attention. For this purpose, I am enclosing the K-Sat 8 point proposal for inclusion in the record.

On behalf of my constituents, thank you for allowing me to bring these points to your attention, and for your consideration to any of their interests.

Sincerely,

J. ROY ROWLAND

Enclosure

K-SAT 8 POINT PROPOSAL FOR COPYRIGHT

1. Provide parity in Copyright fees.

2. Provide parity in programming fees. (Voluen discounts would be allowed)

3. Does not restrict or limit the number of superstations.

4. Does not require superstations to achieve any cable penetration.

5. Provides for nondiscriminatory third party distribution of superstation signals.

6. Does not provide for a "sunset" provision.

7. Provides that any legally licensed broadcaster may up link their own signal.

8. Provides public right of access to all signals covered by Copyright.

APPENDIX I.—LEGISLATIVE MATERIALS

100TH CONGRESS *2d Session*	HOUSE OF REPRESENTATIVES	REPT. 100-887 Part 1

SATELLITE HOME VIEWER COPYRIGHT ACT OF 1988

AUGUST 18, 1988.—Ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2848]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2848) to amend title 17, United States Code, relating to copyrights, to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations for private viewing by Earth station owners, having considered the same, report favorably thereon with amendment and recommends that the bill as amended do pass.

CONTENTS

Page
I. Purpose of the Legislation 8
II. Background 8
  A. Constitutional Parameters 9
  B. History of Satellite Earth Stations 10
  C. The Copyright Problem 11
  D. The Legislative Solution 14
III. Sectional Analysis 17
IV. Statement of Legislative History 29
V. Oversight Findings 32
VI. Statement of the Committee on Government Operations 33
VII. New Budget Authority 33
VIII. Inflationary Impact Statement 32
IX. Cost Estimate 33
X. Statement of the Congressional Budget Office 33
XI. Committee Vote 34
XII. Changes in Existing Law Made by the Law, as Reported 34

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Satellite Home Viewer Copyright Act of 1988".

SEC. 2. AMENDMENTS TO TITLE 17, UNITED STATES CODE.

Title 17, United States Code, is amended as follows:

(1) Section 111 is amended—

(A) in subsection (a)—

(i) in paragraph (3) by striking "or" at the end;

(ii) by redesignating paragraph (4) as paragraph (5); and

(iii) by inserting the following after paragraph (3):

"(4) the secondary transmission is made by a satellite carrier for private home viewing pursuant to a statutory license under section 119; or"; and

(B) in subsection (d)(1)(A) by inserting before "Such statement" the following:

"In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing pursuant to section 119."

(2) Chapter 1 of title 17, United States Code, is amended by adding at the end the following new section:

"§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

"(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

"(1) SUPERSTATIONS.—Subject to the provisions of paragraphs (3), (4), and (6), secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing.

"(2) NETWORK STATIONS.—

"(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) and paragraphs (3), (4), (5), and (6), secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct charge for such retransmission service to each subscriber receiving the secondary transmission.

"(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households.

"(C) NOTIFICATION TO NETWORKS.—A satellite carrier that makes secondary transmissions of a primary transmission by a network station pursuant to subparagraph (A) shall, 90 days after the effective date of the Satellite Home Viewer Copyright Act of 1988, or 90 days after commencing such secondary transmissions, whichever is later, submit to the network that owns or is affiliated with the network station a list identifying (by street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may only be used for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights, on or after the effective date of the Satellite Home Viewer Copyright Act of 1988, a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

"(3) Noncompliance with reporting and payment requirements.—Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

"(4) Willful alterations.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

"(5) Violation of territorial restrictions on statutory license for network stations.—

"(A) Individual violations.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

"(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

"(ii) any statutory damages shall not exceed $5 for such subscriber for each month during which the violation occurred.

"(B) Pattern of violations.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

"(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out; and

"(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out.

"(C) Previous subscribers excluded.—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before July 4, 1988.

"(6) Discrimination by a satellite carrier.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier discriminates against a distributor in a manner which violates the Communications Act of 1934 or rules issued by the Federal Communications Commission with respect to discrimination.

"(7) Geographic limitation on secondary transmissions.—The statutory license created by this section shall apply only to secondary transmissions to

442

households located in the United States, or any of its territories, trust territories, or possessions.

"(b) Statutory License for Secondary Transmissions For Private Home Viewing.—

"(1) Deposits with the register of copyrights.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal, prescribe by regulation—

"(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal, from time to time prescribe by regulation; and

"(B) a royalty fee for that 6-month period, computed by—

"(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 12 cents;

"(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 3 cents; and

"(iii) adding together the totals from clauses (i) and (ii).

"(2) Investment of fees.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title.

"(3) Persons to whom fees are distributed.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Tribunal under paragraph (4).

"(4) Procedures for distribution.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

"(A) Filing of claims for fees.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

"(B) Determination of controversy; distributions.—After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, the Tribunal shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Tribunal finds the existence of a controversy, the Tribunal shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

"(C) Withholding of fees during controversy.—During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

"(c) Determination of Royalty Fees.—

"(1) Applicability and determination of royalty fees.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective until December 31, 1992, unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection. After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragraphs (3) and (4).

"(2) Fee set by voluntary negotiation.—

"(A) Notice of initiation of proceedings.—On or before July 1, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

"(B) Negotiations.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

"(C) Agreements binding on parties; filing of agreements.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within thirty days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

"(D) Period agreement is in effect.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1994.

"(3) Fee set by compulsory arbitration.—

"(A) Notice of initiation of proceedings.—On or before December 31, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2). Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select.

"(B) Selection of arbitration panel.—Not later than 10 days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by copyright owners who claim to be entitled to royalty fees under subsection (b)(4) and who are not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement. The two arbitrators so selected shall, within ten days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators. If either group fails to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fails to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively. The arbitrators selected under this paragraph shall constitute an Arbitration Panel.

"(C) Arbitration proceeding.—The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4), any satellite carrier, and any distributor, who is not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

"(D) FACTORS FOR DETERMINING ROYALTY FEES.—In determining royalty fees under this paragraph, the Arbitration Panel shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing. The fee shall also be calculated to achieve the following objectives:

"(i) To maximize the availability of creative works to the public.

"(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

"(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

"(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

"(E) REPORT TO COPYRIGHT ROYALTY TRIBUNAL.—Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D).

"(F) ACTION BY COPYRIGHT ROYALTY TRIBUNAL.—Within 60 days after receiving the report of the Arbitration Panel under subparagraph (E), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in subparagraph (D). If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph. The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence). The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate. The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying.

"(G) PERIOD DURING WHICH DECISION OF PANEL OR ORDER OF TRIBUNAL EFFECTIVE.—The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become effective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F), and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994.

"(H) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee adopted or ordered under subparagraph (F) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2).

"(4) JUDICIAL REVIEW.—Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the publication of the decision in the Federal Register. The pendency of an appeal under this paragraph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royalty fees specified in that subsection. The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in paragraph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner.

If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3).

"(d) DEFINITIONS.—As used in this section—

"(1) DISTRIBUTOR.—The term 'distributor' means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities.

"(2) NETWORK STATION.—The term 'network station' has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station.

"(3) PRIMARY NETWORK STATION.—The term 'primary network station' means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

"(4) PRIMARY TRANSMISSION.—The term 'primary transmission' has the meaning given that term in section 111(f) of this title.

"(5) PRIVATE HOME VIEWING.—The term 'private home viewing' means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

"(6) SATELLITE CARRIER.—The term 'satellite carrier' means an entity that uses the facilities of a domestic satellite service licensed by the Federal Communications Commission to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

"(7) SECONDARY TRANSMISSION.—The term 'secondary transmission' has the meaning given that term in section 111(f) of this title.

"(8) SUBSCRIBER.—The term 'subscriber' means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

"(9) SUPERSTATION.—The term 'superstation' means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.

"(10) UNSERVED HOUSEHOLD.—The term 'unserved household', with respect to a particular television network, means a household that—

"(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

"(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

"(e) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner.".

(3) Section 501 of title 17, United States Code, is amended by adding at the end the following:

"(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.".

(4) Section 801(b)(3) of title 17, United States Code, is amended by striking "and 116" and inserting ", 116, and 119(b)".

(5) Section 804(d) of title 17, United States Code, is amended by striking "sections 111 or 116" and inserting "section 111, 116, or 119".

(6) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by adding at the end the following new item:

"119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing.".

SEC. 3. SYNDICATED EXCLUSIVITY.

The Federal Communications Commission shall, within 120 days after the effective date of this Act, initiate a combined inquiry and rulemaking proceeding for the purpose of—

(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming, as defined by the Commission, for private viewing similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television, and

(2) adopting such rules if the Commission considers the imposition of such rules to be feasible.

SEC. 4. REPORT ON DISCRIMINATION.

The Federal Communications Commission shall, within 1 year after the effective date of this Act, prepare and submit to the Congress a report on whether, and the extent to which, there exists discrimination referred to in section 119(a)(6) of title 17, United States Code, as added by section 2 of this Act.

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect on January 1, 1989, except that the authority of the Register of Copyrights to issue regulations pursuant to section 119(b)(1) of title 17, United States Code, as added by section 2 of this Act, takes effect on the date of the enactment of this Act.

SEC. 6. TERMINATION.

This Act and the amendments made by this Act cease to be effective on December 31, 1994.

Amend the title so as to read:

A bill to amend title 17, United States Code, relating to copyrights, to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations and network stations for private home viewing.

I. Purpose of the Legislation

The purpose of the proposed legislation is to create an interim statutory license in the Copyright Act for satellite carriers to retransmit television broadcast signals of superstations and network stations to earth station owners for private home viewing. The bill clarifies the legal status of satellite carriers that market or sell the service of delivering signals that embody copyrighted programming, and insures that earth station owners will have access to that programming, while protecting the existing network/affiliate distribution system to the extent that it is successful in providing programming by other technologies.

II. Background

In 1976, Congress enacted the first omnibus revision of the Federal copyright law since 1909. The Copyright Act of 1976 [1] reflects a congressional understanding that the history of copyright law has been one of gradual expansion of the types of works afforded protection. By providing for balance and flexibility, the Act neither freezes the scope of copyrightable technology nor permits unlimited expansion into areas completely outside the legislative intent in 1976.

---

[1] See Public Law 94-553, 90 Stat. 2541.

Despite the inherent flexibility of the Copyright Act, technology has inevitably developed faster than the law in many instances, and in several circumstances Congress has amended the Act to keep pace with these changes. This was the case when Congress amended the Act in 1980 to create copyright protection for computer software;[2] in 1984 when Congress prohibited the owners of a particular phonorecord from renting or leasing the phonorecord for commercial advantage without the permission of the copyright holder of the expression embodied in the phonorecord;[3] also in 1984 when Congress provided a unique and freestanding protection for semiconductor chip products;[4] and finally in 1986 when it ensured that a low power television station qualifies as a local signal for any nearby cable system carrying the station to its subscribers.[5]

When the Copyright Act of 1976 was enacted, ". . . the use of space satellites to transmit programming embodying copyrighted works was in its infancy."[6] Very little attention was paid to copyright issues posed by satellite transmissions directly to individuals for private home viewing. During the intervening years, the ability of the Act to resolve issues pertaining to the application of direct satellite transmissions to dish owners has not been tested to a great extent. As has been the case for other new technologies, it is appropriate for Congress to intercede and delineate this Nation's intellectual property laws.

With this background in mind, further analysis is divided into four sections: an explanation of the constitutional parameters of the proposed legislation; a brief history of satellite earth station technology; an analysis of the copyright problem; and finally, a description of the legislation solution.

A. CONSTITUTIONAL PARAMETERS

The proposed implementing legislation is clearly within Congress' power to modify, amend or expand this country's intellectual property laws. The United States Constitution confers this authority when it provides, '[t]he Congress shall have Power . . . to Promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their Writings and Discoveries."[7]

Sound copyright legislation is necessarily subject to other considerations in addition to the fact that a writing be created and that exclusive rights be protected only for a limited term. Congress must weigh the public costs and benefits derived from protecting a particular interest. "The constitutional purpose of copyright is to facilitate the flow of ideas in the interest of learning." [8]

---

[2] See Public Law 96-517, 94 Stat. 3015, 3028.

[3] See Public Law 98-450, 98 Stat. 1727.

[4] See Public Law 98-620, 98 Stat. 3347, 3356.

[5] See Public Law 99-397, 100 Stat. 848.

[6] See Hearings on Copyright and New Technologies Before the Subcomm. on Courts, Civil Liberties and the Administration of Justice of the House Comm. on the Judiciary, 99th Cong., 1st and 2d sess. 64 (1985-86) [hereinafter referred to as House Hearings, 99th Cong.].

[7] U.S. Const. art. I, § 8, cl. 8.

The Constitution does not establish copyrights; it simply provides that Congress has the power to grant such rights if and as it thinks best. As this Committee observed during the 1909 revision of the copyright law, "[n]ot primarily for the benefit of the author, but primarily for the benefit of the public, such rights are given." [9] This statement has continued validity today. Recently, the Supreme Court confirmed that the monopoly privileges that Congress may confer on creators of intellectual property "are neither unlimited nor primarily designed to provide a special private benefit. Rather, the limited grant is a means by which an important public purpose may be achieved." [10] Stated otherwise, the primary objective of our copyright laws is not to reward the author, but rather to secure for the public the benefits from the creations of authors.

The framers of the Constitution assigned to Congress, the most politically representative of the three branches of the Federal government, the role of establishing intellectual property laws in exchange for public access to creations. In this context, the founding fathers contemplated a political balancing of interests between the public interest and proprietary rights. Congress struck that balance when it established the first patent and copyright laws. As this country has developed and as new technologies have entered the scene, Congress has adjusted this nation's intellectual property laws to incorporate new subject matter and to redefine the balance between public and proprietary interests. The Satellite Home Viewer Copyright Act of 1988 is a continuation of that process.

B. HISTORY OF SATELLITE EARTH STATIONS [11]

In order to understand the copyright problems posed by satellite earth stations and the solution set forth in the proposed legislation, it is useful to have a working knowledge of the history of the technology.

It was only about four decades ago—in 1945—when the science fiction writer, Arthur C, Clarke, laid out the blueprint for the modern system of transmitting television signals by satellite.[12] Clarke first theorized that a satellite placed at a distance of 22,300 miles above the equator would remain in a fixed position, in what he referred to as "geostationary" orbit.[13] Television signals beamed at one of these satellites could be made to bounce back to receiving stations around the world, allowing almost instantaneous television communications.

---

[8] Hearings on the Berne Convention Implementation Act of 1987 Before the Subcomm. on Courts, Civil Liberties and the Administration of Justice of the House Comm. on the Judiciary, 100th Cong., 1st and 2d sess. (1987-88) (statement of Prof. L. Ray Patterson) (June 17, 1987).

[9] H.R. Rep. No. 2222, 60th Cong., 2d Sess. 7 (1909). Similar language occurs in the Senate Report. See S. Rep. No. 1108, 60th Cong., 2d sess. 7 (1909).

[10] *Sony v. Universal City Studios*, 464 U.S. 417, 429 (1984).

[11] Earth stations are also known as "television receive-only antennas" or "TVRO's" or dishes).

[12] For a history of the back-yard dish industry, *see* Owen, Satellite Television, The Atlantic Monthly 45 (June 1986).

[13] Clarke, "Extraterrestrial Relays: Can Rocket Stations Give Worldwide Radio Coverage?", Wireless World 305 (Oct. 1945).

The orbit described by Clarke is now called the "Clarke belt".

It did not take long for Clarke's theory to become reality. In 1962 an eight minute experimental broadcast from the United States to France and England was transmitted via Telstar I, a satellite that was too low to be in geostationary orbit. Shortly thereafter, President Kennedy baptised the first functioning geostationary satellite (Syncom II) by placing a telephone call to the Prime Minister of Nigeria, Abubakar Balewa. In 1964 Americans watched part of the Tokyo Olympic Games courtesy of Syncom III.

But in the 1960s television transmissions were not a priority of the early communications satellites. It took until 1974 for the launching of the first genuine domestic communications satellite, Westar I, built by Western Union. In September of 1975, Home Box Office (HBO) began using Westar to distribute programming to its cable affiliates.

The first American home earth station was constructed in 1976 by H. Taylor Howard, a professor of electrical engineering at Stanford University. On September 14, 1976, he became the first American to receive a satellite transmitted television signal.

From the receipt of Howard's first signal, technological, regulatory and legal changes have occurred at a dizzying rate.

In December of 1976, the Federal Communications Commission (FCC) issued a declarative ruling that 4.5 meter dishes may be acceptable (the previous standard was 9 meters), providing that the terminals attain certain minimal levels of performance. In September of 1979 the FCC made the licensing of satellite dishes voluntary except for dishes used for international communications purposes. In May of 1980 National Microtech offered the first home satellite system priced below $10,000. In January of 1983 HBO and M/A-COM signed the first commercial encryption contract.

The FCC has estimated that as of mid-1986, approximately 1.6 million American households have home satellite dishes.[14] Today, the number of dishes is rapidly approaching the 2 million mark. A fixed position satellite dish that cost $10,000 approximately ten years ago now costs under $1,000. Consumer prices for dishes that tune-in all domestic satellites range from about $1,000 to $1,500.[15]

C. THE COPYRIGHT PROBLEM

When Congress enacted the Copyright Act of 1976, it facilitated the distribution of distant television signals to the public via the cable television industry. This was accomplished by the creation of a compulsory copyright license that authorized cable systems to retransmit distant broadcast signals to the viewing public provided that the systems periodically submit to the Copyright Office certain information and a statutory royalty fee. Since that time, developments in satellite technology and changes in FCC policy have launched a galaxy of new programming services that are distributed to the public via satellite.[16]

---

[14] Matter of inquiry into the Scrabbling of Satellite Signals and Access to Those Signals by Owners of Home Satellite Dish Antennas, Report, FCC Docket No. 86-336, 2 FCC Rcd 1669 (1987).

[15] See House Hearings, 99th Cong., supra note 6, at 111 (statement of Richard L. Brown on behalf of the Satellite Television Industry Assoc./SPACE).

The technological development of the home earth station enables home dish owners to intercept satellite delivered signals that were originally intended to be distributed only to cable systems. Cable systems pay satellite carriers a per subscriber fee for delivering to the system a broadcast or pay cable signal; the systems then send out the signal over the wire to their subscribers. Dish owners, on the other hand, initially paid no fee to the carriers for the signals they receive. In order to impede this unauthorized reception of their satellite-delivered signals, most resale satellite carriers and certain copyright holders in satellite delivered signals decided to encode, or scramble, their signals[17] and to provide descrambling capacity only to paying subscribers of their service.

In October of 1984 President Reagan signed into law "The Cable Communications Policy Act of 1984"[18] which included a provision legalizing the private reception of unscrambled satellite television programming. The new law made such viewing legal until programmers either scrambled their signals or created a marketing scheme that would enable dish owners to pay for the television that they received.

Many home dish owners object to the scrambling of satellite signals because they believe they have a right to receive satellite programming at a price comparable to that paid by cable subscriber recipients of the same programming. They are concerned about the cost of descrambling devices, about price discrimination for the programming services, and about access to most of the programming available to cable subscribers. On the other hand, the home satellite earth station industry has consistently agreed that copyright holders deserve to be fairly compensated.[19]

Satellite carriers also have concerns about scrambling. By scrambling their signals and marketing decoding devices and packages of programming to home dish owners, they may lose their "passive carrier" exemption from liability for copyright infringement under section 111(a)(3) of the Copyright Act. Unlike cable systems, they may not be able to qualify for a section 111 compulsory license to perform the programs publicly, and they might be liable for copyright infringement.[20]

Before going ahead with legislation to meet the concerns of home earth station owners and satellite carriers, the Committee—acting through the Subcommittee on Courts, Civil Liberties and the Administration of Justice—investigated whether satellite carriers might in fact be exempt from copyright liability in their dealings with home earth station owners under the Copyright Act's section 111(a)(3) "passive carrier" exemption. Under that provision, a carrier's retransmission of a broadcast signal that contains copyrighted programming is not an infringement if the carrier "has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission," and if the carrier's activities with respect to the primary transmission "consist solely of providing wires, cables, or other communications channels for the use of others." [21]

---

[16] See Hearings on the Satellite Earth Station Copyright Act of 1987 Before the House Judiciary Comm. Subcomm. on Courts, Civil Liberties and the Administration of Justice, 100th Cong., 1st and 2d sess. (1987-88) (statement of Ralph Oman) (Jan. 27, 1988) [hereinafter referred to as House Hearings, 100th Cong.].

[17] Id. (statement of Roy L. Bliss on behalf of United Video, Inc., Southern Satellite Systems, Inc., and Eastern Microwave, Inc.) (Nov. 19, 1987).

As was observed by one witness before the subcommittee during the 99th Congress: "Scrambling protects the integrity of the signal. A marketing scheme that permits TVRO owners to 'unscramble' signals in exchange for a market-based payment provides the nexus between the interests of the consumer in receiving programming and the right of the producer to compensation." House Hearings, 99th Cong., supra note 6, at 145 (statement of Jack Valenti on behalf of the Motion Picture Association of America).

[18] See Public Law 98-549, section 5, codified at 47 U.S.C. §605(b), 98 Stat. 2802, 2804.

[19] See House Hearings, 99th Cong., supra note 6, at 112 (statement of Richard L. Brown on behalf of the Satellite Television Industry Assoc./SPACE).

[20] Id. at 162 (statement of Edward L. Taylor on behalf of Southern Satellite Systems, Inc., United Video, Inc., and Eastern Microwave, Inc.)

In interpreting this statutory provision, the U.S. Court of Appeals for the Second Circuit held that Eastern Microwave, Inc. was a passive carrier entitled to the section 111(a)(3) exemption because the carrier merely retransmitted station WOR to cable systems without alteration and exercized no control over the selection of the primary transmission or the recipients of the signal.[22] However, the courts have never addressed the issue of whether a satellite carrier that scrambles a signal and markets the signal to home dish owners can avail itself of the "passive carrier" exemption.

Congress did not contemplate that carriers would be engaged in marketing signals to home dish owners when it enacted the section 111(a)(3) exemption. By selling, renting, or licensing descrambling devices to subscribing earth station owners, a carrier exercises direct control over which individual members of the public receive the signals they retransmit. Moreover, these activities represent a far more sophisticated and active involvement in selling signals to the public than does an act of merely providing "wires, cables, or other communications channels." These considerations lead up to the ultimate question of whether any carrier that gets into the business of selling or licensing descrambling devices to subscribing home dish owners is still able to avail itself of the section 111(a)(3) passive carrier exemption from copyright liability.

In pursuit of an answer to this question, the subcommittee chairman (Robert W. Kastenmeier) wrote to the Register of Copyrights asking for an analysis of the application of the Copyright Act on scrambling and on the prospective sale or leasing of descrambling devices to satellite dish owners.[23]

In his response (dated March 17, 1986) to Chairman Kastenmeier, the Register set forth his "preliminary judgment" that the sale or licensing of descrambling devices to satellite earth station owners by common carriers probably falls outside the purview of the copyright exemption granted passive carriers for secondary transmissions of copyrighted works, particularly when the carrier itself scrambles the signal.[24]

Although this issue may sound legalistic and esoteric, it can be distilled to the following proposition: under present copyright law, it must be questioned whether satellite carriers can lease or sell descrambling devices and then sell scrambled superstation signals to earth station owners. Since the combination of these functions is far more *active* than the passive function of providing wires, cables and other communications channels, the carriers could potentially lose their unique status in the copyright law if they engage in the described activities.

---

[21] 17 U.S.C. 111(a)(3).

[22] *Eastern Microwave, Inc.* v. *Doubleday Sports, Inc.* 691 F.2d 125 (2d Cir. 1982).

[23] See letter from Robert W. Kastenmeier to David Ladd (dated Nov. 27, 1984), reprinted in House Hearings, 99th Cong., supra note 6, at 284.

[24] See Letter from Ralph Oman to Robert W. Kastenmeier (dated Mar. 17, 1986), reprinted in id. at 317.

At least one carrier—Southern Satellite Systems, Inc., which delivers WTBS—has already cogently presented this position to the Subcommittee on Telecommunications, Consumer Protection and Finance of the House Committee on Energy and Commerce:

> * * * if Southern Satellite delivered WTBS to the backyard dish user there is no provision in the law for a copyright royalty payment to the copyright owner. Although it could be argued that since Southern Satellite is a common carrier and since the TVRO dish owner uses the signal for purely private viewing, there is no copyright liability. However, that position runs directly contrary to the philosophy of § 111 of the Copyright Act; and as a result we believe that it is a very tenuous position.[25]

During the 99th Congress, the Chairman of the Subcommittee on Telecommunications brought this testimony to the subcommittee's attention, and the two subcommittees worked together to develop a legislative solution.

Other entities have asserted that they might qualify as a "cable system" under section 111, thereby being entitled to a compulsory license under existing law. One of these entities which has espoused this theory has been challenged by the three major television networks and their affiliates, and is now the subject of several lawsuits in Federal courts. The outcome of these lawsuits is presently unknown. While the Committee expresses no view about the merits of the positions advanced by the parties to these lawsuits, it believes that the public interest will be served by creating a new statutory license that is tailored to the specific circumstances of satellite-to-home distribution.

D. THE LEGISLATIVE SOLUTION

The Committee concluded that legislation was necessary in order to meet the concerns of both the home earth station owners and the satellite carriers and to foster the efficient, widespread delivery of programming via satellite. The bill balances the rights of copyright owners by ensuring payment for the use of their property rights, with the rights of satellite dish owners, by assuring availability at reasonable rates of retransmitted television signals. The bill preserves and promotes competition in the electronic marketplace.[26] Moreover, the bill respects the network/affiliate relationship and promotes localism. Further, the bill takes affirmative steps to treat similarly the measure of copyright protection accorded to television programming distributed by national television networks and nonnetwork programming distributed by independent television stations. In short, the bill meets the public interest test for intellectual property legislation.

---

[25] See Hearing on Ensuring Access to Programming for the Backyard Satellite Dish Owner Before the Subcomm. on Telecommunications, Consumer Protection and Finance of the House Comm. on Energy and Commerce, 99th Cong., 2d sess. 101 (1986).

[26] See House Hearings, 100th Cong., supra note 16 (statement of Timothy A. Boggs on behalf of the Motion Picture Association of America) (Nov. 19, 1987).

The proposed legislation amends the Copyright Act of 1976 to provide for the temporary licensing of the secondary transmission by satellite carriers of superstations and network stations for private viewing by owners of earth stations. In brief, the legislation adds a new section 119 to the Act, creating a system by which scrambled superstation and network signals can be transmitted by satellite carriers, through distributors, to earth station owners. The distribution of network signals is restricted to unserved households; that is, those that are unable to receive an adequate off-air signal and that have not recently subscribed to a cable system providing a network station of the same network.

The bill creates a statutory licensing system during a four-year period (phase one) with copyright royalty rates established at a flat fee of 12 cents a month per subscriber for each received superstation signal and 3 cents a month per subscriber for each received network signal. During a second two-year period (phase two), rates are set by negotiation and binding arbitration. After six years, the entire legislative package is terminated by a "sunset" provision. The bill rests on the assumption that Congress should impose a compulsory license only when the marketplace cannot suffice.[27]

After six years, the parties undoubtedly will report back to Congress on the success or failure of this two-phase plan. In the meantime, an exciting new communications technology—satellite earth stations—will be allowed to develop and flourish assuming, of course, that the parameters of the copyright law are respected. The proposal will not only benefit copyright owners, distributors, and earth station manufacturers; it also will benefit rural America, where significant numbers of farm families are inadequately served by broadcast stations licensed by the Federal Communications Commission.

Although initally the only broadcast signals to be delivered to home earth station owners via satellite were independent "superstations," in the last two years satellite carriers have begun to retransmit the signals of certain network affiliated signals as well. H.R. 2848 provides carriers with an interim statutory license to cover both types of retransmissions, but establishes certain restrictions on the retransmission of network signals in order to prevent disruption of the networks' special exclusivity arrangements with their numerous affiliates. In essence, the statutory license for network signals applies in areas where the signals cannot be received via rooftop antennas or cable.

In its attempt to fine tune this legislation, the Committee also addressed several other issues. Representatives of independent television stations argued that H.R. 2848 should provide syndicated exclusivity protection for operators of independant stations who have paid for the exclusive right to broadcast syndicated programs.[28]

---

[27] See House Hearings, 100th Cong., supra note 6 (statement of Thomas S. Rogers on behalf of the National Broadcasting Company, Inc.).

[28] See House Hearings, 100th Cong., supra note 16 (statement of Preston Padden on behalf of the Association of Independent Television Stations) (Jan. 27, 1988).

They argue that the FCC just reinstated (albeit on a delayed basis) syndicated exclusivity restrictions on cable system operators and that Congress should assure similar protection in the home dish arena. The Committee included in the legislation a provision requiring the FCC to study whether syndicated exclusivity protection with respect to the delivery of satellite signals to home earth station owners is feasible and desirable.

The Motion Picture Association of America suggested that the interim statutory license should be restricted to retransmissions on the C-Band. The Committee decided that, given the short duration of the license and the public interest in developing the Ku-Band, such a restriction was unnecessary.

On the issue of carriers' price discrimination against home dish owners, the Committee inserted in the bill language requiring the FCC to report to the Congress on whether, and to what extent, discrimination occurs in a manner that violates the Communications Act of 1984 or the FCC's rules.

Finally, the Committee addressed the fact that certain satellite carriers have filed with the Copyright Office Statement of Account and royalty payments pursuant to section 111, the cable compulsory license. The Committee inserted language clarifying its intent that the new interim statutory license for satellite carriers is the exclusive means by with satellite carriers are authorized to market and deliver copyrightd programming to home dish owners without obtaining the consent of the copyright owner.

The legislation is the outgrowth of hearings held during the 98th, 99th and 100th Congresses by the Committee—through the Subcommittee on Courts, Civil Liberties and the Administration of Justice—which has jurisdiction over copyright law. In drafting curative legislation, the Committee worked closely with the three current common carriers (Southern Satellite, United Video and Eastener Microwave), with active superstations (WTBS), and with a company that currently retransmits there network stations (Satellite Broadcast Networks). The Committee also worked closely with representatives of the movie industry, the earth station industry, the cable television industry and the broadcasting industries (including the networks, their affiliate boards, and independent television stations). Lastly, the Copyright Office has been of enormous assistance in the drafting process.

The proposed legislation reflects the collision course of intellectural property law and technological change that was recently highlighted in an Office of Technology Assessment report on "intellectual Property Rights in an Age of Electronics and Information".[29] That report flashes a "yellow light"; it sounds a note of caution to those who would rush headlong towards legislation.[30] The OTA report warns that the delineation of new rights in a changing technological environment is not an easy task. The Satellite Home Viewer Copyright Act of 1987 attempts to proceed with caution through the yellow light and the intersection of competing interests.

---

[29] See "Intellectual Property Rights in an Age of Electronics and Information" (Office of Technology Assessment 1986).

[30] See Hearing on OTA report on "Intellectual Property Rights in an Age of Electronics and Information" before the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary and the Subcommittee on Patents, Trademarks and Copyrights of the Senate Committee on the Judiciary, 99th Cong., 2d sess. 66 (1986) (statement of Stephen Breyer).

III. SECTIONAL ANALYSIS

H.R. 2848 amends the Copyright Act of 1976, Title 17, United States Code, as follows.

SECTION 1. SHORT TITLE

The short title of the proposed legislation is the "Satellite Home Viewer Copyright Act of 1988".

SECTION 2. AMENDMENTS TO TITLE 17, UNITED STATES CODE

Section 2 of the proposed legislation contains amendments to the Copyright Act of 1976: a new section 119 is added to the Act, creating an interim statutory license for the secondary transmission by satellite carriers of superstations and network stations for private home viewing; only necessary technical and cross-referencing amendments are made to section 111 of the Act, regarding the cable television compulsory license.

Amendments to section 111(a): Cross-references to the cable television compulsory license

The bill amends section 111(a) by inserting a new clause (4) to clarify that, notwithstanding the carrier exemption to the cable compulsory licensing provisions in section 111(a)(3), a satellite carrier that retransmits superstations and network stations for private home viewing by earth station owners is exempted from copyright liability for such retransmission *only* if it secures a statutory license under section 119. Section 111(a)(3) remains in effect to exempt from copyright liability passive common carriers that retransmit broadcast signals to cable systems.

Amendment to section 111(d)(2)(A): Relationship between the cable compulsory license and the statutory license for satellite carriers

The bill allows satellite carriers to contract with distributors, including cable systems, to market services and collect royalties. The bill amends section 111(d)(2)(A) to clarify the obligations of both the satellite carrier and the cable system in instances in which a cable system engages in such distributorship activities on behalf of a satellite carrier. In such cases, the satellite carrier has the responsibility for filing statements of account and paying royalties for publicly performing copyrighted programming under the new section 119 statutory license. Under this scheme, a cable system/distributor would segregate the subscription fees collected on behalf of the satellite carrier from those collected from cable subscribers pursuant to the section 111 cable compulsory license. The cable system would only report in its section 111 statements of account the number of cable subscribers served and the amount of gross receipts collected pursuant to section 111, and would pay royalties pursuant to section 111.

New section 119: The interim statutory license for satellite carriers

Section 119(a). The scope of the license.

Sections 119(a) (1) and (2) establish a statutory license for satellite carriers generally. A license is available where a secondary transmission of the signal of a superstation or a network station is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct charge for such retransmission service from each subscriber receiving the secondary transmission, or from a distributor (such as a cable system) that has contracted with the carrier to deliver the retransmission directly or indirectly to the viewing public.

The bill contains special provisions in sections 119(a) (2) and (5) relating to network stations in recognition of the fact that a small percentage of television households cannot now receive clear signals embodying the programming of the three national television networks. The bill confines the license to the so-called "white areas," that is, households not capable of receiving a particular network by conventional rooftop antennas, and which have not subscribed, within 90 days before the date on which they subscribe to the satellite carrier's service, to a cable system that provides the signal of a primary network station affiliated with that network. The satellite carrier must notify the network of the retransmission by submitting to the network a list identifying the names and addresses of all subscribers to that service. In addition, on the 15th of each month the satellite carrier must submit to the network a list identifying the names and addresses of the subscribers added or dropped since the last report. These notifications are only required if the network has filed information with the Copyright Office concerning the name and address of the person who shall receive the notifications. Special penalties are provided for violations by service outside the "white areas." Willful or repeated individual violations of the "white area" restrictions are subject to ordinary remedies for copyright infringement, except that no damages may be awarded if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscribers, and statutory damages are limited to a maximum of $5.00 per month for each subscriber.

If the satellite carrier engages in a willful or repeated pattern or practice of violations, the court shall issue a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmission of any network station affiliated with the same network. The injunction would be applicable within the geographical area within which the violation took place—whether local, regional, or national. The Committee intends that no pattern or practice of violations be found for a local or regional area that is smaller than a local network station's market, as defined by the Area of Dominant Influence ("ADI"), Designated Market Area ("DMA"), or comparable areas defined by rating services. Under Rule 65(d) of the Federal Rules of Civil Procedure, an injunction against a carrier would run not only against the specific entity named in the lawsuit, but also against the officers, agents, servants, and employees of that entity, and those in active concert or participation with them who receive actual notice of the injunction.

The statutory damages maximum for a pattern and practice of violations is $250,000 per network for each 6-month period. No liability will attach to violations relating to persons who subscribed before July 4, 1988, whether on an individual basis or with respect to any alleged pattern or practice.

By amendment of section 501 of title 17, United States Code, a network station holding a license to perform a particular version of a work is treated as a legal or beneficial owner of the work if the secondary transmission by satellite carrier occurs within the local service area of the station, for purposes of infringement under section 119(a)(5).

Under section 119(a)(5), a carrier will become liable for substantial statutory damages and for permanent injunctive relief if it engages in a "pattern or practice" of delivering the signal of a network station to households that do not meet the criteria for "unserved households" under section 119(d)(10). It is not the intent of this statute to subject a satellite carrier to "pattern or practice" liability as a result of good faith mistakes, provided that the carrier is reasonably diligent in avoiding and correcting violations through an internal compliance program that includes methods of confirmation of household eligibility such as customer questionnaires, sample site signal measurements, and periodic audits, all of which must be served upon each network, which may utilize such information or share it with others solely to monitor the distributor's compliance with the statute. The Committee expects the interested parties, in good faith, to investigate and mutually discuss the correction of instances in which ineligible subscribers are being served before resorting to litigation.

In view of the possibilities for error which would occur despite reasonably diligent efforts to avoid them (because of variables such as customer self-reporting and engineering tests of signal adequacy), it is the intent of this statute that no pattern or practice be found if, excluding subscribers grandfathered under section 119(a)(5)(C), less than 20% of the subscribers to a particular network station (on either local, regional, or national bases) are found ineligible. The Committee stresses at the same time that the 20% allowance is not intended to relieve the carrier from the obligation of reasonable diligence to comply with the "unserved household" criteria of this statute to all households served.

The Act contemplates that network stations will cooperate with one another (and with the network with which they are affiliated) in monitoring the compliance of satellite carriers with the requirements of this Act, and that satellite carriers will similarly cooperate with networks and network stations in achieving compliance. In light of the expense and burden of monitoring the eligibility of thousands of individual households scattered across the nation, such cooperation will clearly be necessary to permit effective compliance. Such cooperation for this purpose will generally be procompetitive, since it will help to preserve the exclusive distribution system—through more than 600 local stations—that has enabled a high percentage of all U.S. households to receive network programming through the existing network/affiliate system.[31] The proposed legislation itself complements the existing distribution system, while also encouraging the use of a new technology to widen current viewing audiences. Moreover, the legislation defines the geographical area within which it is reasonable and appropriate to maintain such exclusivity.

Although the Committee expects and approves of this type of cooperation in achieving compliance with the Act, any restraints ancillary to such activities would be governed by existing law. Absent any anti-competitive ancillary restraints, cooperation among network stations, networks, and satellite carriers in achieving compliance with this Act will serve the public interest and will provide an efficient method to achieve the ends of the copyright law and this Act.

Finally, section 119(a), subsections (3), (4) and (6), establish limitations on the scope of the license, and provide that failure to comply with these limitations subjects a satellite carrier to all the remedies provided in the Copyright Act for such actions.

The Committee is aware that a temporary supply problem may exist with respect to the availability of authorization "bits." In order for a carrier to provide a signal of one network station separate from the signals of other network stations, it needs three bits, one for each network. It is not the intent of this legislation to subject any satellite carrier which has retransmitted network stations to satellite viewers on or prior to April 1, 1988 to liability for damages or to injunctive relief of any kind in the event that the satellite carrier delivers the signal of a network station to a viewer who does not reside in an unserved household as to that network station; this temporary allowance will be applicable only if the delivery is due to, and only during, the unavailability of authorization "bits" necessary to provide that network signal separately from the signal of a network station or stations otherwise available to the viewer.

Noncompliance with reporting and payment requirements.—Section 119(a)(3) provides that a satellite carrier is also subject to full copyright liability if the carrier does not deposit the statement of account or pay the royalty fee required by subsection (b) or has failed to make the submissions to networks required by paragraph (2)(C).

Willful alterations.—Section 119(a)(4) provides that a satellite carrier is fully subject to the remedies provided in the Copyright Act for copyright infringement if the satellite carrier willfully alters, through changes, deletions, or additions, the content of a particular program or any commercial advertising or station announcements transmitted by the primary transmitter during, or immediately before or after, the transmission of the program. The satellite carriers that secure a statutory license under section 119 should be treated the same as cable systems that secure a compulsory license under section 111 when they engage in commercial substitution. For specified actions, they may both be deprived of the benefit of a compulsory license. The market research exception found in section 111(c)(3) was not included in the new section 119(a)(4) because it is unnecessary.

---

[31] See Federal Communications Commission, Scrambling Report, 2 F.C.C. Rcd. 1669, 1686-98 (1987).

Discrimination by a satellite carrier.—Section 119(a)(6) provides that a satellite carrier's "willful or repeated" retransmission of the signals of superstations and network stations to the public for private home viewing will subject the satellite carrier to full copyright liability (under sections 502 through 506 and section 509) if the satellite carrier discriminates against any distributor in a manner which violates the Communications Act of 1934 or rules issued by the FCC with respect to discrimination. (The words "willful or repeated" are used in the same context in section 119(a) as the words are used in section 111(c).)

The Committee is aware that the regulatory status under the Communications Act of the sale of superstation or network signals for private home viewing by dish owners is a complicated subject, largely unresolved by regulation and case law. Subsection 6 is neutral on the resolution by the FCC and the courts of price discrimination issues.

Deregulatory initiatives at the FCC over the past several years have created uncertainty about the regulatory treatment under the Communications Act of the sale of television programming to dish owners. The issue is further complicated by the appearance on the scene of new types of satellite carriers, not only those licensed by the FCC under Title II of the Communications Act but other unlicensed carriers. Both types of carriers are covered by the expansive definition of "satellite carrier" under the proposed legislation, but the regulatory reach of the FCC over newer carriers is somewhat unclear. In any event, the resolution of problems relating to the regulatory treatment by the FCC of carriers and price discrimination will remain in the hands of the FCC.

The Committee does not wish to prejudge or direct the FCC's resolution of these new questions.

It should be stressed that subsection 6, by its express terms, only applies to discrimination by satellite carriers against distributors of programming to earth station owners for private home viewing. It does not extend to the distribution of signals to cable television headends. To the extend that it is of probative value, a reviewing court could, however, weigh prices charged for the delivery of signals to cable headends and compare them to prices charged for direct distribution to dish owners in determining whether there is discrimination under the Communications Act of 1934 and the rules of the FCC. The Committee takes no position on what must be proved to establish price discrimination in violation of the Communications Act or the rules of the FCC.

Geographic limitation.—Section 119(a)(7) provides that the statutory license created in section 119 applies only to secondary transmissions to households located in the United States, or any of its territories, trust possessions, or possessions. This section parallels section 111(f) or title 17, United States Code, which applies to cable television.

Section 119(b)—Operation of the statutory license for satellite carriers

Requirements for a license.—The statutory license provided for in section 119(a) is contingent upon fulfillment of the administrative requirements set forth in section 119(b)(1). That provision directs satellite carriers whose retransmissions are subject to licensing under section 119(a) to deposit with the Register of Copyrights a semi-annual statement of account and royalty fee payment. The dates for filing such statements of account and royalty fee payments and the six-month period which they are to cover are to be determined by the Register of Copyrights. In addition to other such information that the Register may prescribe by regulation, the statements of account are to specify the names and locations of all superstations and network stations whose signals were transmitted by the satellite carrier to subcribers for private home viewing, and the total number of subscribers that received such transmissions.

The statutory royalty fees set forth in section 119(b)(1)(B) are twelve cents per subscriber per superstation signal retransmitted and three cents for each subscriber for each network station retransmitted. These fees approximate the same royalty fees paid by cable households for receipt of similar copyrighted signals. These statutory fees apply only in the limited circumstances described in section 119(c).

Collection and distribution of royalty fees.—Section 119(b)(2) provides that royalty fees paid by satellite carriers under the statutory license shall be received by the Register of Copyrights and, after the Register deducts the reasonable cost incurred by the Copyright Office in administering the license, deposited in the Treasury of the United States. The fees are distributed subsequently, pursuant to the determination of the Copyright Royalty Tribunal under chapter 8 of the Copyright Act of 1976.

Persons to whom fees are distributed.—The copyright owners entitled to participate in the distribution of the royalty fees paid by satellite carriers under the license are specified in section 119(b)(3).

Procedures for distribution.—Section 119(b)(4) sets forth the procedure for the distribution of the royalty fees paid by satellite carriers, which parallels the distribution procedure under the section 111 cable compulsory license. During the month of July of each year, every person claiming to be entitled to license fees must file a claim with the Copyright Royalty Tribunal, in accordance with such provisions as the Tribunal shall establish. The claimants may agree among themselves as to the division and distribution of such fees.

Consistent with current law and practice for the distribution of copyright royalty fees before the Copyright Royalty Tribunal, copyright owners may negotiate and agree among themselves about the division and distribution of the royalty payments: see section 111(d)(4)(A) (for the cable compulsory license): Section 116(2) (for the jukebox compulsory license); and section 118(b). In the Committee's view, this principle is so well established that a new exemption for distribution of copyright royalties generated by satellite retransmissions of television signals for private home viewing is not necessary. The joint activity among copyright owners and satellite distributors and carriers to designate common agents and to negotiate would generally promote competition.

Restraints that are ancillary to the authorized joint conduct would, for example, not be accorded any special treatment under this subsection. Existing law would continue to apply to such restraints. Absent any anticompetitive ancillary restraints, collectively negotiated distribution of royalties among copyright owners and the designation of common agents by satellite distributors and carriers provides an efficient and pro-competitive means to achieve the ends of the copyright laws.

After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether a controversy exists concerning the distribution of royalty fees. If no controverary exists, the Tribune—after deducting reasonable administrative costs—shall distribute the fees to the copyright owners entitled or their agents. If the Tribunal finds the existence of a controversy, it shall, pursuant to the provisions of chapter 8, conduct a proceeding to determine the distribution of royalty fees.

The bill does not include specific provisions to guide the Copyright Royalty Tribunal in determining the appropriate division among competing copyright owners of the royalty fees collected from satellite carriers under section 119. It would not be appropriate to specify particular, limiting standards for distribution. Rather, the Tribunal should consider all pertinent data and considerations presented by the claimants, and should also take into account its royalty distribution determinations under the section 111 cable compulsory license.

Section 119(c)—Alternative methods for determining royalty fees applicable during two phases of the statutory license for statellite carriers

The bill establishes a four-year phase and a two-year phase for the statutory license for satellite carriers; in each phase the royalty fee is determined in a different manner. In the first (four year) phase, pursuant to section 119(c)(1), the statutory fees established in section 119(b)(1)(B) (twelve cents per subscriber per superstation signal retransmitted and three cents per subscriber per network signal retransmitted) shall apply. The first phase shall be in effect from January 1, 1989, until December 31, 1992. In the second phase, the fee shall be set by the voluntary negotiation or compulsory arbitration procedures established in sections 119(c)(2) and 119(c)(3).

However, because the legislation is premised on encouraging the establishment of a marketplace licensing mechanism for satellite carriers, sections 119(c)(1) and 119(c)(2)(C) provide that a fee set at any time by voluntary negotiation among satellite carriers, distributors and copyright owners in accordance with the provision of the bill will supersede the statutory rate or a rate determination by compulsory arbitration.

Section 119(c)(2) requires the Copyright Royalty Tribunal to initiate voluntary negotiation proceedings between satellite carriers, distributors, and copyright owners, eighteen months before the bill's first phase runs out, to encourage the parties to negotiate a fee for the second phase before the statutory fee expires. The parties may designate common agents to negotiate, agree to, or pay the relevant fees; if the parties fail to do so, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties. The negotiation proceeding costs must be paid by the parties. If the parties reach a voluntary agreement, copies of the agreement must be filed in a timely manner with the Copyright Office, and the negotiated fee will remain in effect from the date specified in the agreement until December 31, 1994.

The second phase of the Act is premised on a finding that negotations among satellite carriers, distributors and copyright owners is an interim step between the statutory licensing provisions of the Act (phase one) and the marketplace. The proposed legislation therefore authorizes the parties, at any time, to negotiate and agree to a copyright royalty fee.

The joint activity among satellite carriers, distributors and copyright owners would generally be pro-competitive since the market involving distribution of television signals by satellites to earth station owners is dispersed among millions of households spread throughout this country and also since the legislation is expected to encourage new entrants to participate in the distribution process. Negotiation of individual copyright royalty agreements is neither feasible nor economic. It would be costly and inefficient for copyright holders to attempt to negotiate and enforce agreements with distributors and individual households when the revenues produced by a single earth station are so small.

Although subsection (c) authorizes certain joint conduct necessary to achieve mutually agreeable terms for the payment of royalty fees for the transmission of copyrighted television signals for private home viewing, and, where voluntary agreements are not achieved, provides for the use of binding arbitration, it is not an authorization for joint conduct extending beyond the explicit statutory terms. The Committee made a similar decision in the Berne Convention Implementation Act of 1988, when an antitrust exemption to allow negotiations between representatives of the jukebox industry and the performing rights societies was not deemed necessary.[32]

Absent any anticompetitive ancillary restraints, collectively negotiated distribution of royalties among copyright owners and the designation of common agents by satellite distributors and carriers provides an efficient and pro-competitive means to achieve the ends of the copyright laws.

If some or all of the parties have not voluntarily negotiated a fee for the second phase by December 31, 1991, twelve months before the expiration of the first phase, section 119(c)(3) provides that the Copyright Royalty Tribunal shall initiate a compulsory arbitration proceeding for the purpose of determining a reasonable royalty fee to be paid under section 119 for the second phase. The Tribunal shall publish notice of the initiation of the proceeding as well as a list of potential arbitrators. Within ten days of the publication of this notice, one arbitrator must be chosen by the copyright owners and one by the satellite carriers and their distributors. The two arbitrators must choose a third arbitrator from the same list within ten days.

---

[32] See H. Rep. No. 100-609, 100th Cong., 1st Sess. (1988) at 25-26.

The three arbitrators shall have sixty days from the publication of the initial notice to conduct an arbitration proceeding and to determine a royalty fee, using guidelines specified in the bill. All costs involved in this proceeding must be paid for by the parties. The Arbitration Panel shall submit its determination in the form of a report, along with the written record, to the Copyright Royalty Tribunal. The Tribunal shall have sixty days to review the report and either accept or reject the Panel's determination and publish the action in the Federal Register. If the Tribunal rejects the determination, the Tribunal shall, within the same sixty day period, issue an order setting the royalty fee. Thus, within 120 days of the publication of the initial notice, a new royalty fee shall be determined through a compulsory arbitration procedure, to be effective from January 1, 1993, until December 31, 1994, or until modified by the United States Court of Appeals for the District of Columbia Circuit pursuant to section 119(c)(4). The fee shall apply to all copyright owners, satellite carriers, and distributors not party to a voluntary agreement.

Section 119(c)(3)(D) provides guidelines by which the Arbitration Panel shall determine royalty fees. In particular, the Panel must consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station. It is the intention of the bill that satellite carriers pay a fee for the retransmission of superstations and network stations that approximates the fees paid by cable systems engaged in the same or similar activities. In addition, the Panel must consider the fee established under any voluntary fee agreement filed with the Copyright Office, and/or the last fee proposed by the parties in negotiations under section 119; these figures are relevant as an indication of the approximate free market value of the licenses at issue.

Section 119(c)(4) provides that the rate adopted or determined by the Copyright Royalty Tribunal pursuant to the compulsory arbitration proceeding may be appealed to the District of Columbia Circuit Court of Appeals within thirty days of publication. However, while appeal of the rate is pending, satellite carriers would still be required to deposit statements of account and royalties and to pay royalty fees calculated under the rate that is at issue on appeal. The bill gives the court jurisdiction to enter its own determination with respect to the royalty rate, to order the repayment of any excess fees deposited under section 119(b)(1)(B), and to order the payment of any underpaid fees with interest, in accordance with its final judgment. The court may also vacate the Tribunal's decision and remand the case for furhter arbitration proceedings.

Section 119(d)—Definitions

A "distributor" is defined as any entity which contracts with a carrier to distribute secondary transmissions received from the carrier either as a single channel, or in a package with other programming, to individual subscribers for a private home viewing, either directly or indirectly through other program distribution entities. This definition permits cable systems or any other distributor to contract with satellite carriers operating under a section 119 statutory license for the purpose of providing the service of marketing the superstations and network stations retransmitted by the satellite carrier to individual subscribers.

The terms "primary transmission" and "secondary transmission" are defined so as to have the same meaning under section 119 as they have under section 111.

The term "private viewing" is defined as viewing, for private use in an individual's household by means of equipment which is operated by such individual and which serves only such individual's household, of a secondary transmission delivered by satellite of a primary transmission of a television broadcast station licensed by the FCC. By defining this term, the bill excludes from eligibility for a section 119 statutory license a transmission of a superstation or a network station to a place open to the public or any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered.

A "satellite carrier" is broadly defined as an entity that uses the facilities of a domestic satellite service licensed by the FCC, and that owns or leases a capacity or service on a satellite in order to provide the point-to-multipoint relay of television station signals to numerous receive-only earth stations, except to the extent the entity provides such distribution pursuant to tariff that is not restricted to private home viewing. The definition of "satellite carrier" is intended to include not only firms that are themselves licensed by the Federal Communications Commission to make point-to-multipoint distribution of television station signals, but also firms that contract with an FCC-licensed carrier to perform that function.

The term "network station" has the same meaning as that term in section 111(f) and includes a translator station or terrestrial satellite station that rebroadcasts the network station.

A "primary network station" is a network station that broadcasts the basic programming service of one particular national network.

The term "subscriber" is defined as an individual who receives a secondary transmission service for private home viewing by means of a satellite transmission under section 119, and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor. This definition clarifies that, although the satellite carrier ultimately has the responsibility of paying royalty fees under section 119(b)(1)(B), the distributor can be the entity that charges and collects subscription fees for the retransmission service from the subscribers.

A "superstation" is defined as a television broadcast station, other than a network station, that is licensed by the Federal Communications Commission and that was retransmitted by a satellite carrier.

The term "unserved household" means a household that with respect to a particular television network, (A) cannot receive, through use of a conventional outdoor antenna, a signal of Grade B intensity (as defined by the FCC, currently in 47 C.F.R. section 73.683(a)) of a primary network station affiliated with that network, and (B) has not, within 90 days before the date on which the household subscribes (initially or non renewal) to receive by satellite a network station affiliated with that network subscribed to a cable system that provides the signal of a primary network station affiliated with that network. The purpose of the latter requirement is to ensure that households will not cancel their cable subscriptions in order to qualify as "unserved households" eligible to receive a network station.

Because the household must be able to receive the signal of a "primary" network station to fall outside the definition of unserved household, it would not be sufficient if a household is able to receive only the signal of a secondary network station: that is, a station affiliated with two or more networks that does not broadcast or rebroadcast the basic programming service of any single national network.

Section 119(e)—Exclusivity of the statutory license

The bill explicitly provides that neither the cable compulsory license, nor the exemptions of section 111 (such as the passive carrier exemption) can be construed during the six-year statutory license period to apply to secondary transmissions by satellite carrier for private home viewing of programming contained in a superstation or network station transmission. Unless the statutory license of section 119 is obtained, during the six-year interim period the secondary transmission by satellite carrier for private home viewing can take place only with consent of the copyright owner.

However, nothing in this Act is intended to reflect any view as to the proper interpretation of section 111 of this title prior to enactment of this Act, or after this Act ceases to be effective on December 31, 1994. In particular, nothing in this Act is intended to reflect any view concerning whether, prior to enactment of this Act, or following the termination of this Act, an entity that retransmits television broadcast signals by satellite to private homes could qualify as a "cable system" under section 111(f) or as a passive carrier under section 111(a)(3).

SECTION 3. SYNDICATED EXCLUSIVITY

The bill directs the Federal Communications Commission, within 120 days after the date of enactment, to undertake a combined inquiry and rulemaking proceeding regarding the feasibility—including the technological and economic aspects—of imposing syndicated exclusivity rules for private home viewing.

On May 18, 1988, the FCC voted to adopt syndicated exclusivity rules for the cable television industry similar to the rules that were in effect between 1972 and 1981. "Syndicated exclusivity" refers to the recognition and maintenance of exclusive right in copyrighted works that are licensed to local television stations for off-network public performance. The Copyright Act established an exclusive right of public performance in section 106(4) for motion pictures and other audiovisual works affected by television. Section 201(d) of the Act authorizes the licensing or transfer of rights in whole or in part. The rights created by section 106 can be subdivided based on time (duration), place (geography), and nature of use. For example, as stated in the House Report accompanying the 1976

Copyright Act, "a local broadcasting station holding an exclusive license to transmit a particular work within . . . a particular geographic area and for a particular period of time, could sue, in its own name as copyright owner, someone who infringed that particular exclusive right." [33]

Under the FCC's "syndex" rules, which will become effective in August 1989, cable television systems will be barred, under certain circumstances, from using the compulsory license to import the same programs for which local stations have already secured the exclusive exhibition rights in their service areas. According to the FCC, this action will correct the anomalous situation whereby cable systems have been able to make the compulsory license take precedence over program licenses negotiated in the open market. The FCC decision was premised on a finding that it was never the intention of Congress, when creating the cable compulsory license, to allow the abrogations of local broadcast stations' licenses.

In considering H.R. 2848, the Committee analyzed whether the same principles which led the Commission to adopt syndicated program exclusivity for cable could and should apply to the satellite delivery of superstations and network stations for private home viewing.

The statutory license created in this legislation allows carriers to deliver programming to home dish owners which may duplicate the programming under exclusive license to a local broadcaster serving many of those dish owners. The objective of H.R. 2848 is to expand programming available to home dish owners; however, such expansion may appropriately be constrained by the application of "syndex" rules, if feasible in this market.

While the Committee concluded that the provisions dealing with network affiliated stations (the "white area" provisions) could not appropriately be applied to independent television stations, a further conclusion was made that independent television station owners of syndicated programming could potentially be afforded similar protection, if feasible. Another of the principal purposes of the legislation is to establish a level playing field between the cable television and earth station industries. Therefore, the Committee felt it appropriate to inquire whether syndicated exclusivity rules, such as those promulgated for the former, could be applicable to the latter. As a consequence, the bill instructs the FCC to initate, within 120 days of enactment, a combined inquiry and rulemaking proceeding for the purpose of determining the feasibility of imposing syndicated exclusivity with respect to the delivery of syndicated programming, as defined by the Commission, for private viewing similar to the FCC rules with respect to syndicated exclusivity and cable television. The Commission shall adopt syndicated exclusivity rules for satellite transmission of television signals for private home viewing if it considers the imposition of such rules to be feasible.

---

[33] H. Rep. No. 1476, 94th Cong., 2d Sess. 123 (1976). Before the advent of cable television and satellites, the existence of well-defined television service areas for each station led to the creation of separate markets for the licensing of television programming. By adding time and geographical limitations to licensing agreements, copyright owners and their licensees created a so-called "syndicated market" with respect to local television stations. The term "syndication" dates back to the time when celluloid prints or videotape copies were physically transferred (syndicated) from market to market as the license to perform was granted to a particular station. The physical transfer of copies still takes place, especially in the case of theatrical motion pictures, but today the term syndication refers more broadly to the licensing of works for off-network performance.

During the time-period between 1972 and mid 1981, when syndicated exclusivity rules were last enforced by the FCC, these rules were sometimes referred to as "surrogate copyright". But in the Copyright Act of 1976 Congress implicitly recognized that the FCC could issue appropriate regulations with regard to program exclusivity. See, e.g., 17 U.S.C. section 111(c).

SECTION 4. REPORT ON DISCRIMINATION

Within one year after the effective date of the Act, the FCC shall prepare and submit a report on whether, and the extent to which, price discrimination is practiced by satellite carriers servicing the earth station market.

SECTION 5. EFFECTIVE DATE

The bill provides that the Satellite Home Viewer Copyright Act of 1988 and the amendments made by the Act take effect on January 1, 1989. However, the Act specifically authorizes the Copyright Office to issue regulations pursuant to section 119(b)(1) upon the date of enactment of the Act.

SECTION 6. TERMINATION

The Act and the amendments made by the Act terminate—that is, are "sunset"—on December 31, 1994.

IV. STATEMENT OF LEGISLATIVE HISTORY

In the few short years since enactment of the Copyright Revision Act of 1976, advances in information technology have had a significant impact on intellectual property rights.

During the past three Congresses—acting through the Subcommittee on Courts, Civil Liberties and the Administration of Justice—has devoted extensive time to the general subject of copyright and technological change.

98th Congress.—In 1983 the subcommittee held two days of oversight hearings on copyright and technological change.[34] These hearings were followed in 1984 by a congressional copyright and technology symposium organized by the Copyright Office and attended by several Members of the House and Senate Judiciary Committees.[35]

Also during the 98th Congress, the subcommittee—with its counterpart subcommittee in the Senate—requested a study by the Office of Technology Assessment (OTA) on intellectual property in a changing technological society.

99th Congess.—In April of 1986 the House and Senate Committees on the Judiciary received the OTA Report which was entitled "Intellectual Property Rights in an Age of Electronics and Information".[36] On April 16, 1986, the House and Senate Subcommittees held a joint hearing in order to receive the study. Testimony was received from a panel representing OTA (Linda Garcia, Project Director; and Professor Paul Goldstein) and a panel commenting on the Report (Judge Stephen Breyer and Jon Baumgarten, Esq.).[37] OTA found that changes being wrought by new communications technologies are as far reaching as any ever experienced since the invention of the printing press:

---

[34] See Hearings on Copyright and Technological Change Before the Subcomm. on Courts, Civil Liberties and the Administration of Justice of the House Comm. on the Judiciary, 98th Cong., 1st sess. (1983).

[35] The transcript of the symposium and materials relating to the symposium are reprinted in id., at 162 et seq.

[36] See "Intellectual Property Rights in an Age of Electronics and Information" (Office of Technology Assessment 1986).

> These changes generate a whole range of new social, economic and cultural opportunities; at the same time, however, they will cause problems for the intellectual property system, undermining many of the mechanisms by which it has successfully operated in the past. Because intellectual property, and especially copyright policy, structures the use and flow of information in society, how Congress acts to resolve these problems is likely to determine not only which individuals and groups benefit from these new opportunities, but also in what ways and what extent we, as a society, might exploit these technologies.[38]

Also during the 99th Congress, the subcommittee conducted an inquiry into copyright and new communications technologies.[39] Two specific areas of concern attracted the subcommittee's attention: low power television and satellite earth stations. Two days of hearings were held during which testimony was received from Ralph Oman (Register of Copyrights); Richard Hutcheson (Community Broadcasters Association); Richard Brown (Society for Private and Commercial Earth Stations); Jack Valenti (Motion Picture Association of America); Edward L. Taylor (Tempo Enterprises, Inc.); James P. Mooney (National Cable Television Association); and Preston Padden (Association of Independent Television Stations, Inc.).

As an outcome of these hearings, two legislative proposals were developed: the first relating to low power television was ultimately enacted into law [40] and the second affecting earth station owners was processed through the full Committee.

H.R. 5126—the predecessor bill to H.R. 2848 in the 100th Congress—was drafted by subcommittee Chairman Kastenmeier, then-Chairman Wirth (House Commerce Subcommittee on Telecommunications and Finance), Congressman Synar and Congressman Boucher to create a temporary compulsory license for satellite carriers to retransmit distant broadcast signals of superstations (including both independent and network broadcast stations) to earth station owners for private viewing.

On September 18, 1986, H.R. 5126 was marked-up by the subcommittee and reported favorably in the form of a clean bill (H.R.

---

[37] See Hearing on OTA Report on "Intellectual Property Rights in an Age of Electronics and Information," supra note 30.

[38] Id. at 12 (statement of Linda Garcia).

[39] See House Hearings, 99th Cong., supra note 6.

[40] Public Law 99-397 clarifies any ambiguity that might exist in current copyright law regarding the classification of cable systems' retransmission of low power television (LPTV) signals for purposes of calculating copyright royalty payments and obligations under Section 111(c) of the Copyright Act. This amendment makes clear that a cable system's retransmission of such a signal within the defined local service area of the low power television station constitutes retransmission of a "local signal", for which no royalty payment is required. See 100 Stat. 848.

5572). On September 25, 1986, H.R. 5572 was considered by the full Committee and reported favorably by a roll call vote of 17 to 12. Due to lack of time in the Congress and inaction in the Senate, H.R. 5572 was not taken to the House floor.

100th Congress.—H.R. 2848 (Kastenmeier, Synar, Boucher, Moorhead, Hughes and Garcia)[41]—the "Satellite Home Viewer Copyright Act of 1987"—was introduced shortly after the start of the 100th Congress. Similar to the bill reported by the full Committee in the late days of the 99th Congress, it creates a statutory license of eight years duration—in two phases—for satellite carriers to retransmit distant broadcast signals of superstations to earth station owners for private home viewing. During the first four year phase, the copyright royalty is statutorily established at a flat fee of 12 cents a month per subscriber for each received superstation signal. During the second four year period, rates are set by negotiation and binding arbitration. After eight years, the entire legislative package is terminated by a "sunset" provision.

During the 100th Congress, the Subcommittee held two days of hearings on H.R. 2848. On November 19, 1987, the Subcommittee received testimony from six private sector witnesses (representing the Motion Picture Association of America, the National Cable Television Association, the Satellite Broadcasting and Communications Association, common carriers, Satellite Broadcasting Network, and General Instrument Corporation.

On January 27, 1988, the Subcommittee heard from the Register of Copyrights (Ralph Oman), the three television networks and their respective affiliate boards, a network carrier (Netlink USA), the Association of Independent Television Stations, Inc., the National Rural Electric Cooperative Association, the National Rural Telecommunications Cooperative Association, and the Home Satellite Television Association.

On April 27, 1988, the Subcommittee commenced mark-up of H.R. 2848. General debate occurred and a substitute amendment was placed on the table. Due in part to the press of business on other matters, in part to an intervening decision made by the Federal Communications Commission regarding syndicated exclusivity, and in part to the need to develop a new substitute, the Subcommittee took no action during the next three months.

On July 7, 1988, the mark-up continued. Subcommittee Chairman Kastenmeier asked—and received—unanimous consent to remove the initial substitute from the table. Chairman Kastenmeier then offered a second substitute amendment to H.R. 2848.

Four major issue areas were confronted in this amendment: (1) an arrangement for the retransmission of network signals to so-called "white areas"; (2) fairness in marketing or price discrimination; (3) the exclusivity of television programming; and (4) the term of the statutory license.

First, the subcommittee amendment contained a network/white area provision which permits the retransmission of network programming by satellite carriers for private home viewing but limits the retransmission to unserved areas. The amendment sets forth a notification to network provision (about subscribership) and a penalty structure for retransmission to persons who do not live in unserved areas.

---

[41] Additional cosponsors to H.R. 2848 are Mr. Eckart, Mr. Wise, Mr. Olin, Mr. Penny, Mr. Wilson, Mr. Staggers, Mr. Tauke, Mr. Price of Illinois, Mr. Skelton, Mr. Gunderson, Mr. Hyde, Mr. Sundquist, Mr. Barnard, Mr. Fauntroy, Mr. Campbell, Mr. Smith of New Hampshire, Mr. Hammerschmidt, Mrs. Vucanovich, Mrs. Smith of Nebraska, Mr. Hatcher, and Mr. Houghton.

Second, the subcommittee amendment requires the Federal Communications Commission to report to the Congress on whether, and to what extent, price discrimination is practiced by satellite carriers in the earth station market pursuant to the Communications Act of 1934 and the rules and regulations of the Commission. As regards the copyright reach of the bill, the subcommittee amendment provided a broadened definition of "satellite carrier" to cover newer carriers. So, the FCC study will cover not only traditional carriers but newer carriers as well.

Third, the subcommittee added a new section to the bill regarding syndicated exclusively. New section 3 requires the Federal Communications Commission to, within 120 days after the effective date of the Act, to initiate a combined inquiry and rulemaking proceeding for the purpose of (1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming, as defined by the Commission, for private viewing similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television; and (2) adopting such rules if the Commission considers the imposition of such to be feasible.

Fourth, the term of the statutory license contemplated by H.R. 2848—originally set for eight years, with a first phase mandatory license of four years and a second phase arbitrated license of another four years—was decreased to six years (a four year statutory license followed by a two year arbitrated license). The Act and all the amendments made by the Act will cease to be effective on December 31, 1994.

After debate, with a quorum of Members being present, the amendment was agreed to and H.R. 2848, as amended, was reported favorably to the full Committee by voice vote, no objections being heard.

On August 2, 1988, H.R. 2848, as amended, was considered by the full Committee. Three amendments were adopted. The first, offered by Mr. Boucher, clarified and refined the nework/white area provisions of the bill. The second amendment, offered by Mr. Synar, eliminated the restrictions in the bill relating to new superstations. And the third, offered by Mr. Kastenmeier, struck out two references to the antitrust laws and the definition of "antitrust law" in the bill as not being necessary. After adoption of the three amendments, with a quorum of Members being present, H.R. 2848 was reported favorably to the full House in the form of an amendment in the nature of a substitute, by voice vote, no objections being heard.

V. OVERSIGHT FINDINGS

The Committee makes no oversight findings with respect to this legislation.

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

VI. Statement of the Committee on Government Operations

No statement has been received on the legislation from the House Committee on Government Operations.

VII. New Budget Authority

In regard to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the bill creates no new budget authority on increased tax expenditures for the Federal judiciary.

VIII. Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the committee feels that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

IX. Cost Estimate

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the committee agrees with the cost estimate of the Congressional Budget Office.

X. Statement of the Congressional Budget Office

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the following is the cost estimate on H.R. 4262, prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 9, 1988.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 2848, the Satellite Home Viewer Copyright Act of 1988, as ordered reported by the House Committee on the Judiciary, August 2, 1988. We expect that enactment of the bill would cost the federal government about $250,000 over the next two fiscal years.

H.R. 2848 would create an interim statutory license for satellite carriers to retransmit distant broadcast signals of superstations and network stations to earth station owners for private home viewing. The bill would require satellite carriers to file statements of accounts and deposit royalty fees with the Copyright Office every six months.

The bill would establish two phases for determining the royalty fees. In the first phase (January 1, 1989 to December 31, 1992), the royalty fee would be $0.12 a month per subscriber for each superstation signal received and $0.03 a month per subscriber for each network signal received. The Copyright Royalty Tribunal would distribute the royalty fees, with interest, to the copyright owners whose works were included in an applicable secondary transmission, and who file a claim with the tribunal.

In the second phase (January 1, 1993 to December 31, 1994) the royalty fees would be set through negotiation and binding arbitration. The tribunal would be required to intitiate voluntary negotiation proceedings between the affected parties. If the parties fail to reach and agreement through negotiation, an arbitration panel would be appointed, and after hearing arguments from both sides, would recommend a royalty fee to the tribunal. In turn, the tribunal would make a final determination concerning the amount of the royalty fee. If the affected parties disagree with the tribunal's final determination, they would be permitted to appeal the decision to the U.S. Court of Appeals for the District of Columbia.

We estimate that the Copyright Office and the tribunal would incur no net costs if H.R. 2848 were enacted. In both phases, the Copyright Office and the tribunal would deduct from the royalty fees collected the administrative costs associated with processing, collecting, and distributing the royalties. Furthermore, the bill would require the negotiating parties to pay for all costs of the phase two negotiation and arbitration proceedings.

There could be some costs to the federal government associated with appeals of royalty fee determinations to the Court of Appeals. Based on information from the Copyright Office, we do not expect such costs to be significant, because there are likely to be few, if any, appeals in a given year.

The Federal Communications Commission (FCC) would be required to undertake a combined inquiry and rulemaking proceeding regarding the feasibility of imposing syndicated exclusivity rules for private home viewing. In addition, the FCC would be required to prepare a report on whether price discrimination is practiced by satellite carriers servicing the earth station market. Based on information provided by the FCC, we estimate that completion of the rulemaking and report would cost approximately $250,000 over the next two fiscal years.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Douglas Criscitello, who can be reached on 226-2850.

Sincerely,

James L. Blum,
Acting Director.

XI. COMMITTEE VOTE

August 2, 1988, H.R. 2848 was reported favorably to the full House, in the nature of a substitute, by voice vote with no objections being heard.

XII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

Sec.
101. Definitions.

* * * * * * *

119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing.

* * * * * * *

§ 111. Limitations on exclusive rights: Secondary transmissions

(a) Certain Secondary Transmissions Exempted.—The secondary transmission of a primary transmission embodying a performance or display of a work is not an infringement of copyright if—

(1) * * *

* * * * * * *

(3) the secondary transmission is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others: *Provided*, That the provisions of this clause extend only to the activities of said carrier with respect to secondary transmissions and do not exempt from liability the activities of others with respect to their own primary or secondary transmissions; **[**or**]**

(4) the secondary transmission is made by a satellite carrier for private home viewing pursuant to a statutory license under section 119; or

[4**]** *(5)* the secondary transmission is not made by a cable system but is made by a governmental body, or other nonprofit organization, without any purpose of direct or indirect commercial advantage, and without charge to the recipients of the secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

* * * * * * *

(d) Compulsory License for Secondary Transmissions by Cable Systems.—

(1) A cable system whose secondary transmissions have been subject to compulsory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after

consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), prescribe by regulation—

(A) a statement of account, covering the six months next preceeding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, and such other data as the Register of Copyright may, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), from time to time prescribe by regulation. *In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing pursuant to section 119.* Such statement shall also include a special statement of account covering any non-network television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs showing the times, dates, stations, and programs involved in such substituted or added carriage; and

* * * * * * *

§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) SUPERSTATIONS.—Subject to the provisions of paragraphs (3), (4), and (6), secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing.

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) (C) and paragraphs (3), (4), (5), and (6), secondary transmission of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is

made by a satellite carrier to the public for private home viewing, and the carrier makes a direct charge for such retransmission service to each subscriber receiving the secondary transmission.

(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmission to persons who reside in unserved households.

(C) NOTIFICATION TO NETWORKS—A satellite carrier that makes secondary transmissions of a primary transmission by a network station pursuant to subparagraph (A) shall, 90 days after the effective date of the Satellite Home Viewer Copyright Act of 1988, or 90 days after commencing such secondary transmissions, wherever is later, submit to the network that owns or is affiliated with the network station a list identifying (by street address, including county and zip code) all subscribers to which the satellite carrier curently makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may only be used for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the net work to whom the submissions are to be made places on file with the Register of Copyrights, on or after the effectiver date of the Satellite Home Viewer Copyright Act of 1988, a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraphs (1) and (2), the willfull or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

(4) WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or sta-

tion announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

(5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.—

(A) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

(ii) any statutory damages shall not exceed $5 for such subscriber for each month during which the violation occurred.

(B) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out; and

(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out.

(C) PREVIOUS SUBSCRIBERS EXCLUDED.—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before July 4, 1988.

(6) DISCRIMINATION BY A SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a pri-

mary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier discriminates against a distributor in a manner which violates the Communications Act of 1934 or rules issued by the Federal Communications Commission with respect to discrimination.

(7) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States, or any of its territories, trust territories, or possessions.

(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal, prescribed by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal, from time to time prescribe by regulation; and

(B) a royalty fee for that 6-month period, computed by—

(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 12 cents;

(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 3 cents; and

(iii) adding together the totals from clauses (i) and (ii).

(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title.

(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who

file a claim with the Copyright Royalty Tribunal under paragraph (4).

(4) Procedures for distribution.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

(A) Filing of claims for fees.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) Determination of controversy; distributions.—After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, the Tribunal shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Tribunal finds the existence of a controversy, the Tribunal shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(C) Withholding of fees during controversy.—During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(c) Determination of royalty fees.—

(1) Applicability and determination of royalty fees.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective until December 31, 1992, unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection. After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragraphs (3) and (4).

(2) Fee set by voluntary negotiation.—

(A) Notice of initiation of proceedings.—On or before July 1, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

(B) Negotiations.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a volun-

tary agreement or voluntary agreements for the payments of royalty fees. Any such Satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. It the parties fail to identify common agents, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

(C) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within thirty days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

(D) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1994.

(3) FEE SET BY COMPULSORY ARBITRATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before December 31, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2). Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select.

(B) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by copyright owners who claim to be entitled to royalty fees under subsection (b)(4) and who are not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement. The two arbitrators so selected shall, within ten days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators. If either group fails to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fails to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively.

The arbitrators selected under this paragraph shall constitute an Arbitrator Panel.

(C) ARBITRATION PROCEEDING.—The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4), any satellite carrier, and any distributor, who is not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

(D) FACTORS FOR DETERMINING ROYALTY FEES.—In determining royalty fees under this paragraph, the Arbitration Panel shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations, or network stations for private home viewing. The fee shall also be caculated to achieve the following objectives:

(i) To maximize the availability of creative works to the public.

(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

(E) REPORT TO COPYRIGHT ROYALTY TRIBUNAL.—Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D).

(F) ACTION BY COPYRIGHT ROYALTY TRIBUNAL.—Within 60 days after receiving the report of the Arbitration Panel under subparagraph (E), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The

Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in subparagraph (D). If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph. The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence). The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate. The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying.

(G) Period during which decision of panel or order of tribunal effective.—The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become efective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F), and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994.

(H) Persons subject to royalty fee.—The royalty fee adopted or ordered under subparagraph (F) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2).

(4) Judicial review.—Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the publication of the decision in the Federal Register. The pendency of an appeal under this paragaph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royalty fees specified in that subsection. The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in paragaph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner. If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3).

(d) Definitions.—As used in this section—

(1) Distributor.—The term "distributor" means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities.

(2) Network station.—The term "network station" has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station.

(3) Primary network station.—The term "primary network station" means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

(4) Primary transmission.—The term "primary transmission" has the meaning given that term in section 111(f) of this title.

(5) Private home viewing.—The term "private home viewing" means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

(6) Satellite carrier.—The term "satellite carrier" means an entity that uses the facilities of a domestic satellite service licensed by the Federal Communications Commission to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

(7) Secondary transmission.—The term "secondary transmission" has the meaning given that term in section 111(f) of this title.

(8) Subscriber.—The term "subscriber" means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(9) Superstation.—The term 'superstation" means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.

(10) Unserved household.—The term "unserved household", with respect to a particular television network, means a household that—

(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communica-

tions Commission) of a primary network station affiliated with that network, and

(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

(e) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner.

* * * * * * *

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

* * * * * * *

§ 501. Infringement of copyright

(a) * * *

* * * * * * *

(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or benficial owner if such secondary transmission occurs within the local service area of that station.

* * * * * * *

CHAPTER 8—COPYRIGHT ROYALTY TRIBUNAL

§ 801. Copyright Royalty Tribunal: Establishment and purpose

(a) There is hereby created an independent Copyright Royalty Tribunal in the legislative branch.

(b) Subject to the provisions of this chapter, the purposes of the Tribunal shall be—

(1) * * *

* * * * * * *

(3) to distribute royalty fees deposited with the Register of Copyrights under sections 111 [and 116], *116, and 119(b),* and to determine, in cases where controversy exists, the distribution of such fees.

* * * * * * *

§ 804. Institution and conclusion of proceedings

(a) * * *

* * * * * * *

(d) With respect to proceedings under section 801(b)(3), concerning the distribution of royalty fees in certain circumstances under [sections 111 or 116], *sections 111, 116, or 119,* the Chairman of the Tribunal shall, upon determination by the Tribunal that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

* * * * * * *

100th Congress
2d Session
HOUSE OF REPRESENTATIVES
Rept. 100-887
Part 2

SATELLITE HOME VIEWERS ACT OF 1988

September 29, 1988.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Dingell, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2848]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2848) to amend title 17, United States Code, relating to copyrights, to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station owners, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

Page
The Amendment 2
Purpose and Summary 10
Background and Need for the Legislation 10
  History of the Satellite Cable Programming Industry 10
  "Scrambling" of Satellite Cable Programming 11
  The Cable Compulsory License 12
  Piracy of Satellite-Delivered Cable Programming 14
  Need for Legislation 14
Hearings 16
Committee Consideration 16
Committee Oversight Findings 17
Committee on Government Operations 17
Committee Cost Estimate 17
Congressional Budget Office Estimate 17
Inflationary Impact Statement 18

89-277

Section-by-Section Analysis 18
Changes in Existing Law, as Reported 29
Additional Views of Mr. Tauzin 44

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Satellite Home Viewer Act of 1988".

SEC. 2. AMENDMENTS TO TITLE 17, UNITED STATES CODE.

Title 17, United States Code, is amended as follows:

(1) Section 111 is amended—

(A) in subsection (a)—

(i) in paragraph (3) by striking "or" at the end;

(ii) by redesignating paragraph (4) as paragraph (5); and

(iii) by inserting the following after paragraph (3):

"(4) the secondary transmission is made by a satellite carrier for private home viewing pursuant to a statutory license under section 119; or"; and

(B) in subsection (d)(1)(A) by inserting before "Such statement" the following:

"In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing pursuant to section 119.".

(2) Chapter 1 of title 17, United States Code, is amended by adding at the end the following new section:

"§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

"(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

"(1) SUPERSTATIONS.—Subject to the provisions of paragraphs (3), (4), and (6) of this subsection, secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing.

"(2) NETWORK STATIONS.—

"(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection, secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct charge for such retransmission service to each subscriber receiving the secondary transmission.

"(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households.

"(C) NOTIFICATION TO NETWORKS.—A satellite carrier that makes secondary transmissions of a primary transmission by a network station pursuant to subparagraph (A) shall, 90 days after the effective date of the Satellite Home Viewer Act of 1988, or 90 days after commencing such secondary transmissions, whichever is later, submit to the network that owns or is affiliated with the network station a list identifying (by street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights, on or after the effective date of the Satellite Home Viewer Act of 1988, a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

"(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

"(4) WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

"(5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.—

"(A) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

"(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

"(ii) any statutory damages shall not exceed $5 for such subscriber for each month during which the violation occurred.

"(B) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

"(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out; and

"(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out.

"(C) PREVIOUS SUBSCRIBERS EXCLUDED.—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before July 7, 1988.

"(6) DISCRIMINATION BY A SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

"(7) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States, or any of its territories, trust territories, or possessions.

"(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

"(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal, prescribe by regulation—

"(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal, from time to time prescribe by regulation; and

"(B) a royalty fee for that 6-month period, computed by—

"(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 12 cents;

"(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 3 cents; and

"(iii) adding together the totals from clauses (i) and (ii).

"(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title.

"(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Tribunal under paragraph (4).

"(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

"(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

"(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, the Tribunal shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Tribunal finds the existence of a controversy, the Tribunal shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

"(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

"(c) Determination of Royalty Fees.—

"(1) Applicability and determination of royalty fees.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective until December 31, 1992, unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection. After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragraphs (3) and (4)

"(2) Fee set by voluntary negotiation.—

"(A) Notice of initiation of proceedings.—On or before July 1, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

"(B) Negotiations.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

"(C) Agreements binding on parties; filing of agreements.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

"(D) Period agreement is in effect.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1994.

"(3) Fee set by compulsory arbitration.—

"(A) Notice of initiation of proceedings.—On or before December 31, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2). Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select.

"(B) Selection of arbitration panel.—Not later than 10 days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by copyright owners who claim to be entitled to royalty fees under subsection (b)(4) and who are not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement. The two arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators. If either group fail to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fails to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively. The arbitrators selected under this paragraph shall constitute an Arbitration Panel.

"(C) Arbitration proceeding.—The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4), any satellite carrier, and any distributor, who is not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

"(D) Factors for determining royalty fees.—In determining royalty fees under this paragraph, the Arbitration Panel shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing. The fee shall also be calculated to achieve the following objectives:

"(i) To maximize the availability of creative works to the public.

"(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

"(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

"(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

"(E) Report to Copyright Royalty Tribunal.—Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D).

"(F) Action by Copyright Royalty Tribunal.—Within 60 days after receiving the report of the Arbitration Panel under subparagraph (E), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in subparagraph (D). If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph. The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence). The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate. The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying.

"(G) Period during which decision of Panel or order of Tribunal effective.—The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become effective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F), and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994.

"(H) Persons subject to royalty fee.—The royalty fee adopted or ordered under subparagraph (F) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2).

"(4) Judicial review.—Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. The pendency of an appeal under this paragraph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royalty fees specified in that subsection. The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in paragraph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner. If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3).

"(d) Definitions.—As used in this section—

"(1) Distributor.—The term 'distributor' means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities.

"(2) Network station.—The term 'network station' has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station.

"(3) Primary network station.—The term 'primary network station' means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

"(4) Primary transmission.—The term 'primary transmission' has the meaning given that term in section 111(f) of this title.

"(5) Private home viewing.—The term 'private home viewing' means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

"(6) Satellite carrier.—The term 'satellite carrier' means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

"(7) Secondary transmission.—The term 'secondary transmission' has the meaning given that term in section 111(f) of this title.

"(8) Subscriber.—The term 'subscriber' means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

"(9) Superstation.—The term 'superstation' means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.

"(10) Unserved household.—The term 'unserved household', with respect to a particular television network, means a household that—

"(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

"(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

"(e) Exclusivity of This Section With Respect to Secondary Transmissions of Broadcast Stations by Satellite to Members of the Public.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner.".

(3) Section 501 of title 17, United States Code, is amended by adding at the end the following:

"(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.".

(4) Section 801(b)(3) of title 17, United States Code, is amended by striking "and 116" and inserting ", 116, and 119(b)".

(5) Section 804(d) of title 17, United States Code, is amended by striking "sections 111 or 116" and inserting "section 111, 116, or 119".

(6) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by adding at the end the following new item:

"119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing.".

SEC. 3. SYNDICATED EXCLUSIVITY; REPORT ON DISCRIMINATION.

Title VII of The Communications Act of 1934 (47 U.S.C. 601 et seq.) is amended by adding at the end the following:

"SYNDICATED EXCLUSIVITY

"SEC. 712. (a) The Federal Communications Commission shall, within 120 days after the effective date of the Satellite Home Viewer Act of 1988, initiate a combined inquiry and rulemaking proceeding for the purpose of—

"(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming (as defined by the Commission) for private viewing (as defined in section 705 of this Act) similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television; and

"(2) adopting such rules if the Commission considers the imposition of such rules to be feasible.

"(b) In the event that the Commission adopts such rules, any willful and repeated secondary transmission made by a satellite carrier to the public of a primary transmission embodying the performance or display of a work which violates such Commission rules shall be subject to the remedies, sanctions, and penalties provided by title V and section 705 of this Act.

"DISCRIMINATION

"SEC. 713. The Federal Communications Commission shall, within 1 year after the effective date of the Satellite Home Viewer Act of 1988, prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on whether, and the extent to which, there exists discrimination described in section 119(a)(6) of title 17, United States Code.".

SEC. 4. INQUIRY ON ENCRYPTION STANDARD.

Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended by adding at the end thereof the following:

"(f) Within 6 months after the date of enactment of the Satellite Home Viewer Act of 1988, the Federal Communications Commission shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing. In conducting such inquiry, the Commission shall take into account—

"(1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation;

"(2) incorporation of technological enhancements, including advanced television formats;

"(3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming;

"(4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems;

"(5) the effect of any such standard on competition in the manufacture of decryption equipment; and

"(6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards.

"(g) If the Commission finds, based on the information gathered from the inquiry required by subsection (f), that a universal encryption standard is necessary and in the public interest, the Commission shall initiate a rulemaking to establish such a standard.".

SEC. 5. PIRACY OF SATELLITE CABLE PROGRAMMING.

Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) in subsection (c)—

(A) by striking "and" at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting "; and"; and

(C) by adding at the end the following:

"(6) the term 'any person aggrieved' shall include any person with proprietary rights in the intercepted communication by wire or radio including wholesale or retail distributors of satellite cable programming, and, in the case of a violation of paragraph (4) of subsection (d), shall also include any person engaged in the lawful manufacture, distribution, or sale of equipment necessary to authorize or receive satellite cable programming.";

(2) in subsection (d)(1), by striking "$1,000" and inserting "$2,000";

(3) in paragraph (2) of subsection (d), by striking "$25,000" and all that follows through the end of that paragraph and inserting "$50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than $100,000 or imprisoned for not more than 5 years, or both, for any subsequent conviction.";

(4) in subsection (d)(3)(A), by inserting "or paragraph (4) of subsection (d)" immediately after "subsection (a)";

(5) in subsection (d)(3)(B) by striking "may" the first time it appears;

(6) in subsection (d)(3)(B)(i), by inserting "may" immediately before "grant";

(7) in subsection (d)(3)(B)(ii), by inserting "may" immediately before "award";

(8) in subsection (d)(3)(B)(iii), by inserting "shall" immediately before "direct";

(9) in subsection (d)(3)(C)(i)(II)—

(A) by inserting "of subsection (a)" immediately after "violation";

(B) by striking "$250" and inserting "$1,000"; and

(C) by inserting immediately before the period the following: ", and for each violation of paragraph (4) of this subsection involved in the action an aggrieved party may recover statutory damages in a sum not less than $10,000, or more than $100,000, as the court considers just";

(10) in subsection (d)(3)(C)(ii), by striking "$50,000" and inserting "$100,000 for each violation of subsection (a)";

(11) in subsection (d)(3)(C)(iii), by striking "$100" and inserting "$250"; and

(12) by striking paragraph (4) of subsection (d) and inserting the following:

"(4) Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or is intended for any other activity prohibited by subsection (a), shall be fined not more than $500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both. For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.".

SEC. 6. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect on January 1, 1989, except that the authority of the Register of Copyrights to issue regulations pursuant to section 119(b)(1) of title 17, United States Code, as added by section 2 of this Act, takes effect on the date of the enactment of this Act.

SEC. 7. TERMINATION.

This Act and the amendments made by this Act (other than the amendments made by section 5) cease to be effective on December 31, 1994.

Amend the title so as to read: "A bill to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations and network stations for private home viewing,

to prevent piracy of satellite cable programming, and for other purposes.".

PURPOSE OF THE LEGISLATION

H.R. 2848, "the Satellite Home Viewer Act", as amended and reported by the Committee, amends the Communications Act of 1934 and the Copyright Act of 1976 for the purpose of ensuring availability of satellite-delivered video programming to home satellite antenna owners. This legislation creates an interim statutory license in the Copyright Act for satellite carriers to retransmit television broadcast signals of superstations and network stations to earth station owners for private home viewing.

H.R. 2848 directs the Federal Communications Commission to institute a proceeding to determine the feasibility of imposing syndicated exclusivity rules for satellite carriage of broadcast signals. The legislation clarifies that violations of any such rules, if enacted by the Commission, are violations of the Communications Act and should be subject to such sanctions and penalties as are contained in the Communications Act. The legislation also clarifies and strengthens current law concerning unauthorized descrambling or interception of satellite-delivered cable programming. Finally, this legislation requires the Commission to initiate an inquiry into the need for a universal decryption standard for home satellite antenna users.

BACKGROUND AND NEED FOR LEGISLATION

HISTORY OF THE SATELLITE CABLE PROGRAMMING INDUSTRY

Reception of television signals via backyard satellite dishes began in 1976, one year after Home Box Office Inc. (HBO) began delivering its movies to cable television operators by satellite. At that time, however, reception of such signals by owners of backyard satellite dishes was not authorized by law.

The former Section 605 of the Communications Act of 1934 (amended and redesignated as section 705 by the Cable Communications Policy Act of 1984) made it illegal to receive radio communications without authorization. In a number of cases in the early 1980's, the court ruled that the unauthorized reception of pay television signals, including signals intended for use by cable systems, consitituted a prohibited "use" of the signal under Section 605 of the Communications Act. (See, e.g., *Chartwell Communications Group* v. *Westbrook*, 637 F. 2d 459 (6th Cir., 1980.)) The FCC took the view that home satellite dish owners receiving satellite signals without authorization were involved in an illegal practice.

Congress conferred full legal status on the television receive-only (TVRO) industry in the Cable Communications Policy Act of 1984 (Cable Act) (P.L. 98-549). The Cable Act expressly legalized the sale and use of backyard dishes. It allowed backyard dish owners to receive satellite-relayed cable programming free-of-charge if the programming is not encrypted, or "scrambled," or if a marketing system authorizing private viewing had not been established. The Cable Act substantially increased penalties for unauthorized signal reception—including reception of scrambled signals. Although the legislation did not require scrabmled signals to be sold to backyard dish owners, programmers have an incentive to market scrambled signals to backyard dish owners. During the debate on the legislation, Congress noted an expectation that increased penalties for unauthorized reception of cable services would allow cable programmers to obtain payment for their programming more easily.

Since the passage of the Cable Act, the backyard satellite dish industry has experienced explosive growth, particularly in the South and Midwest. The number of backyard satellite earth stations in operation in the United States has increased from an estimated 5,000 in 1980 to over 2 million today. Complete home receiving systems, which once sold for as much as $36,000, now are advertised for as little as $1,000 or less. In addition, technology has reduced the size of the backyard dish significantly—from the 30-foot-wide dishes of several years ago to dishes approximately six to ten feet in diameter today.

"SCRAMBLING" OF SATELLITE CABLE PROGRAMMING

The technological development of home earth station equipment enabled home dish owners to intercept satellite delivered signals that originally were intended to be distributed only to cable systems. Cable systems pay satellite carriers a per subscriber fee for delivering to the system a broadcast signal; the systems then send out the signal over the wire to their subscribers. Dish owners, on the other hand, initially paid no fee to the carriers for the signals they received. In order to impede this unauthorized reception of their satellite-delivered signals, most resale satellite carriers and certain copyright holders in satellite delivered signals decided to encode, or scramble, their signals and to provide descrambling capacity only to paying subscribers.

Many home dish owners have stated objections to the scrambling and current marketing practices of satellite delivered video programming because they believe that they have a right to receive satellite programming at a price comparable to that paid by cable system subscribers to the same programming. Some consumers have expressed concern about the cost of descrambling devices; price discrimination for programming services available to dish owners, and access to the programming available to cable subscribers. The satellite dish industry and most dish owners, however, have consistently agreed that copyright holders deserve to be fairly compensated by viewers of their programming.

In recent years the three major television networks have begun to scramble their satellite feeds to their owned and affiliated stations, and several companies have begun to retransmit, scramble and sell newtwork station and superstation signals to home satellite antenna owners. This practice raises several questions under the Copyright Act of 1976 (Copyright Act).

The Copyright Act provides that the owner of the copyright has the exclusive right to reproduce, distribute copies of, and publicly perform and display the copyrighted work. (17 U.S.C. Section 106.) A copyright holder generally has the exclusive right to decide who shall make use of his or her work and persons desiring to reproduce, distribute or publicly perform or display the copyrighted work must obtain the copyright holder's consent.

The Copyright Act, however, does contain a limited exception from copyright liability. Currently, under Section 111(a)(3) "passive carriers" are provided an exemption from liability for secondary transmissions of copyrighted works where the carrier "has no direct or indirect control over the content or selection of the primary transmission, or over the particular recipients of the secondary transmission . . ." A carrier's activities with regard to a secondary transmission must "consist solely of providing wires, cables or other communications channels for the use of others." Since most satellite carriers of broadcast station signals scramble the signals and market decoding devices and packages of programming to home dish owners, there is continuing uncertainty about whether or not such carriers are liable under the Copyright Act.

Some analysts of the copyright laws assert that by selling, renting, or relicensing descrambling devices to subscribing earth station owners, a carrier exercises direct control over which individual members of the public receive the signals they transmit. Moreover, it has been claimed that the activities of satellite carriers, which almost always include the scrambling of a broadcast signal, represent a far more sophisticated and active involvement in selling signals to the public than does an active of merely providing "wires, cables, or other communications channels."

In a March 17, 1986 letter to Representative Robert W. Kastenmeier, Chairman of the Judiciary Committee's Courts, Civil Liberties and Administration of Justice Subcommittee, Mr. Ralph Oman, Registrar of Copyrights, set forth his "preliminary judgment" that the sale or licensing of descrambling devices to satellite earth station owners by common carriers falls outside the purview of the copyright exemption granted "passive carriers" for secondary transmissions of copyrighted works, particularly when the carrier itself scrambles the signal. "The exemption failing," Mr. Oman concluded, "the resale carrier requires the consent of the copyright owner of the underlying programming."

Similarly, in testimony before the Telecommunications Subcommittee in 1986, one common carrier, Southern Satellite, which delivers WTBS, stated its belief that the section 111(a)(3) exemption was not available to the carriers of satellite delivered broadcasting programming. Southern Satellite stated:

> [I]f Southern Satellite delivered WTBS to the backyard dish user, there is no provision in the law for a copyright royalty payment to the copyright owner. Although it could be argued that since Southern Satellite is a common carrier and since the TVRO dish owner uses the signal for purely private viewing, there is no copyright liability. However, that position runs directly contrary to the philosophy (section 111) of the Copyright Act and as a result we believe that it is a very tenuous position.

The Cable Compulsory License

During the early years of the cable industry, there was continuing controversy over the legal status of cable carriage of broadcast signals. In 1968, the Supreme Court ruled in *Fortnightly Corp.* v.

United Artists television, 392 U.S. 390, that cable retransmission of broadcast signals did not constitute infringement of the property rights protected by the Copyright Act of 1909. The Court determined that with regard to the "local signal" question presented in the particular case, cable operated more as a viewer than as a broadcaster, and therefore did not incur copyright liability for retransmitting local signals to its subscribers.

In *Teleprompter Corp.* v. *Columbia Broadcasting System*, 415 U.S. 394 (1974), the Supreme Court reaffirmed its 1968 decision. Further, the Court held that the act of retransmitting distant as well as local signals without permission of the program copyright owner or the broadcast operator did not violate the Copyright Act of 1909. The decision clarified the long standing question whether the Copyright Act of 1909 protected programs transmitted on broadcast signals from being retransmitted by cable operators. Critics of the Court's ruling maintained that the two decisions attenuated programming property rights, which rights, they argued, are a necessary preconditioned for the successful operation of market forces.

In the 1976 Copyright Act, Congress extended copyright protection to cable retransmissions of broadcast programs. Cable systems were, however, not made fully liable for the use of others' programming, but instead were granted a "compulsory license." The compulsory license gives cable television operators guaranteed access to copyrighted programming carried by television stations in exchange for payment of a specified percentage of the cable system's gross receipts to the Copyright Royalty Tribunal (CRT). This statutory royalty fee is then distributed, based on filings made with the CRT, to the copyright owners whose work are being retransmitted on cable. The net effect of the compulsory license is to allow cable system, by paying the predetermined fee to the CRT, to retransmit copyrighted programs without purchasing rights in the open marketplace.

Over the past several years, some satellite carriers have contended that the compulsory license covers secondary transmissions of broadcast signals by new technologies such as satellites. At least one court, however, has expressly rejected that contention. In *Pacific & Southern Co. Inc.* v. *Satellite Broadcast Network, Inc.* (D.Ga., 1988, Slip Opinion), the Court held that the cable compulsory copyright license does not cover Satellite Broadcast Network's (SBN) satellite retransmission of broadcast signals to backyard dish owners. In making his ruling, the Judge stated that "The clear statutory definition of 'cable system' contained in the Copyright Act indicates that SBN is not a cable system entitled to a compulsory license to retransmit broadcast signals free from copyright liability."

As a result of the *SBN* decision, it has become increasingly clear that satellite retransmission of broadcast signals for sale to home earth station owners is probably not exempt from copyright liability under present law. The Committee believes that the public interest best will be served by creating an interim statutory solution that will allow carriers of broadcast signals to serve home satellite antenna users until marketplace solutions to this problem can be developed.

PIRACY OF SATELLITE-DELIVERED CABLE PROGRAMMING

In general, "piracy" refers to the decoding or decryption of scrambled programming without the authorization of the programmer nor payment for the programming. This theft of service is accomplished by alerting legitimate decoders, such as the VideoCipher II, with illicit decoder technolgy. For example, legitimate chips which decode the service are cloned and placed in decoder boxes to which access is restricted. The Satellite Broadcasting and Communications Association has indicated that there are approximately 350,000-400,000 pirated descrambler boxes, compared with about 400,000 untampered boxes.

During the 100th Congress, the Subcommittee on Telecommunications and Finance held two hearings during which the testimony on the problem of piracy was reviewed (July 1, 1987 and June 15, 1988). Testimony at the hearing demonstrated that piracy has become an increasingly distressing problem to the satellite industry and seriously threatens to undermine the industry's survival. According to the testimony submitted to the Subcommittee, piracy most seriously threatens legitmate satellite dealers and satellite programmers, who otherwise would be receiving payment for their programming or descrambling devices.

According to testimony from one satellite dish dealer, "the dealer who sells a chipped [unauthorized] decoder sells it at an average profit of $1000 or more, and usually sells legitimate satellite equipment at his own cost, making all profits on the illegal chips. It is impossible for an honest dealer to compete against this type of price structure."

General Instrument Corp. (GI), the makers of VideoCipher II, has taken several measures to combat the piracy problem. GI recently announced the introduction of VideoCipher II-Plus System in June 1989, includes, among other things, integrated module, that may be distributed directly to consumers and selected dealers. To descramble signals, consumers will have to insert the cards into their integrated receiver/descramblers. In a further effort to reduce piracy, GI recently announced a plan to monitor more closely the distribution of decoders. Additionally, other industry representatives, including the Satellite Broadcasting and Communications Association, the Motion Picture Association of America, and the National Cable Television Association have increased efforts and resources toward combating the problem.

In response to the piracy problem, the Federal Communications Commission has increased enforcement efforts under Section 705(a) of the Communications Act and Title 18 U.S. Code Section 2511(1), each of which prohibit the unauthorized interception and use of satellite and other radio communications. In a recent report, the Commission recommended that the Congress raise the civil and criminal penalties in Section 705(a) to emphasize the importance of stopping piracy and enhance the ability of law enforcement authorities and aggrieved private parties to deter piracy.

NEED FOR LEGISLATION

Despite the explosion in recent years of new technologies and outlets delivering video programming, millions of Americans are not sharing in the prorgramming bounty available from broadcasters or over cable systems. Presently, as many as one to six million households are in areas where the reception of off-air network signals is not possible or is of unacceptable quality. A number of these households are not presently served, and likely never will be served, by cable systems.

The Satellite Broadcasting and Communications Association testified before the Telecommunications Subcommittee that approximately 500,000 of the 2 million households with satellite television antennas subscribe to satellite delivered television networks or independent superstations or both. Each month approximately 10,000 to 15,000 new subscribers are added. Many of these consumers live in rural areas and are dependent upon satellite antenna systems for the delivery of any video programming.

The legality of satellite delivered broadcast signals to home satellite antenna owners is unsettled. For many years, there have been questions about the legality of such carriage under the passive carriage exemption provided under Section 111(a) of the Copyright Act of 1976. In light of the recent *SBN* decision in which a District Court held that the cable compulsory copyright license does not apply to satellite carriers, there is no clearly legal method by which to provide retransmitted boradcast programming to home satellite antenna owners. It is therefore appropriate for the Committee to address this exceedingly important issue. H.R. 2848 resolves the legal issues surrounding provision of broadcast signals to rural America by creating an interim statutory license under the Copyright Act of 1976 for the secondary retransmission of superstations and television network stations for private home viewing.

As a general rule, the Committee does not favor interference with workable marketplace relationships for the transfer of exhibition rights in programming. In the instant case, however, the Committee perceived a need to address an existing problem that may serve to deny millions of American households access to satellite delivered broadcast television signals. This problem has been addressed narrowly, by endorsing a temporary, transitional statutory license to bridge the gap until the marketplace can function effectively.

In establishing a six year sunset on the statutory license, the Committee expects that the marketplace and competition will eventually serve the needs of home satellite dish owners. It is the Committee's expectation that during the pendency of this legislation the home satellite antenna marketplace will grow and develop so that marketplace forces will satisfy the programming needs and demands of home satellite antenna owners in the years to come, eliminating any further need for government intervention.

H.R. 2848 also addresses what has been identified as potentially the greatest threat to a viable home satellite antenna industry, which is the unauthorized decryption or interception of satellite cable programming. Affected industries, consumers, and the Federal Communications Commission all have stated the need for clearer and more stringent penalties for piracy of video signals. The Committee believes that the piracy provision contained in H.R. 2848 provides law enforcement authorities greater ability to stem the growing problem of theft of satellite delivered programming.

Hearings

During the 100th Congress, the Committee's Subcommittee on Telecommunications and Finance has held a series of hearings focusing on the public policy implications of the scrambling of satellite-delivered video programming. On July 1, 1987 and June 13, 1988 the Subcommittee held hearings on H.R. 1885, legislation designed, among other purposes, to ensure the continued availability of satellite-delivered video programming. Witnesses at those hearings included: the Honorable Dennis R. Patrick, Chairman, Federal Communications Commission; the Honorable Alfred Sikes, Assistant Secretary for Communications and Information Policy, National Telecommunications and Information Administration; Mr. Larry Carlson, Senior Vice President for Cinemax and New Business Development, Home Box Office; Mr. Ronald Lightstone, Senior Vice President, VIACOM International, Inc.; Mr. James P. Mooney, President and Chief Executive Officer, National Cable Television Association; Mr. B.R. Phillips, II, Chief Executive Officer, National Rural Telecommunications Cooperative; Mr. David G. Wolford, Chief Executive Officer, Home Satellite Services; Mr. Marty Lafferty, Vice Presdient, Direct Broadcast Sales, Turner Broadcasting Systems; Mr. Federick W. Finn, Esq., Brown and Finn; Mr. Charles C. Hewitt, President, Satellite Broadcasting and Communications Association; Mr. Larry Dunham, VideoCipher Division, General Instruments Corporation; Mr. Donald Berg, Vice President Sales and Marketing, Channel Master; Ms. Millie Fontenot, Owner, Satellite Earth Stations East, Inc., Mr. George Kocian, Owner Tiverton Dish Farm; Mr. Michael J. Fuchs, Chairman and Chief Executive Officer, Home Box Office, Inc.; Mr. Michael Hobbs, Senior Vice President for Policy and Planning, Public Broadcasting Service; Mr. Winston H. Cox, Chairman and Chief Executive Officer, Showtime/The Movie Channel; Mr. Robert L. Schmidt, President, Wireless Cable Association; Mr. Timothy Robertson, President, Christian Broadcasting Network; and Mr. Sid Swartz, President, West, Inc.

The Subcommittee on Telecommunnications and Finance held a hearing on H.R. 2848 on Friday, September 23, 1988. Testimony was received from Mr. Preston R. Padden, President, Association of Independent Television Stations, Inc.; Mr. Mark C. Ellison, Vice President, Government Affairs & General Counsel, Satellite Broadcasting and Communications Association; Mr. Timothy A. Boggs, Vice President Public Affairs, Warner Communications Inc.; and Mr. Steven Effros, President, Community Antenna Television Association.

Committee Consideration

On September 23, 1988, the Subcommittee on Telecommunications and Finance met in open session and ordered reported the bill H.R. 2848, as amended, by a voice vote, a quorum being present. During the markup, the Subcommittee adopted an amendment in the nature of a substitute offered by Representative Billy Tauzin. The Subcommittee substitute, creates a new Section 712 of the Communications Act, requires the FCC to institute a proceeding to determine the feasibility of imposing syndicated exclusivity rules for satellite carriage of broadcast signals, and clarifies that violations of any such rules would be violations of the Communications Act. The Subcommittee Substitute also added an anti-theft or "piracy" provision that clarifies and strenghthens current law concerning unauthorized descrambling of satellite cable programming. The Substitute also contained a requirement that the FCC initiate an Inquiry into the need for a universal decryption standard for home satellite antenna users.

On September 27, 1988, the Committee met in open session and ordered reported the bill H.R. 2848, as amended, by a voice vcte, a quorum being present. During Committee markup a technical amendment was adopted.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the Subcommittee held oversight hearings and made findings that are reflected in the legislative report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost incurred in carrying out H.R. 2848 would be $300,000 over the next two fiscal years.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 28, 1988.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4992, a bill to expand our national telecommunications system for the benefit of the hearing impaired and speech impaired populations, and for other purposes, as ordered reported by the House Committee on Energy and Commerce, September 27, 1988.

The bill would direct the Federal Communications Commission (FCC), in consultation with the Architectural and Transportation Barriers Compliance Board, to issue regulations requiring federal departments and agencies to be equipped with telecommunications devices for the deaf (TDDs). The FCC also would be required to publish the TDD access numbers. In addition, the bill would require congressional offices to be equipped with TDDs.

It is uncertain how many TDDs the federal government would have to purchase if H.R. 4992 were enacted because the bill only requires the FCC to "ensure that federal departments and agencies are equipped with TDDs". The bill does not define federal departments and agencies, so it is difficult to determine how many TDDs would be required.

If, for example, only the head office of each federal agency needed a TDD, then TDDs (at about $250 each) for approximately 500 offices would cost a total of $125,000 in 1990. If, on the other hand, federal departments and agencies were required to have a TDD in each location, then TDDs for about 7,000 buildings would cost a total of $1.8 million. The cost of this requirement ultimately would depend on the number and type of TDDs purchased. The cost of acquiring TDDs for congressional offices would depend on the same factors, and would range from $100,000 to $200,000.

Other costs of this bill are not expected to be significant. Enactment of H.R. 4992 would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: H.R. 2848 would have no inflationary impact.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

The short title of the proposed legislation is the "Satellite Home Viewer Act of 1988".

SECTION 2. AMENDMENTS TO TITLE 17, UNITED STATES CODE

Section 2 of the proposed legislation contains amendments to the Copyright Act of 1976: a new section 119 is added to the Act, creating an interim statutory license for the secondary transmission by satellite carriers of superstations and network stations for private home viewing; only necessary technical and cross-referencing amendments are made to section 111 of the Act, regarding the cable television compulsory license.

Amendments to section 111(a): Cross-references to the cable television compulsory license

The bill amends section 111(a) by inserting a new clause (4) to clarify that, notwithstanding the carrier exemption to the cable compulsory licensing provisions in section 111(a)(3), a satellite carrier that retransmits superstations and network stations for private home viewing by earth station owners is exempted from copyright liability for such retransmission only if it secures a statutory license under section 119. Section 111(a)(3) remains in effect to exempt from copyright liability passive common carriers that retransmit broadcast signals to cable systems.

Amendment to section 111(d)(2)(A): Relationship between the cable compulsory license and the statutory license for satellite carriers

The bill amends section 111(d)(2)(A) to clarify the obligations of both the satellite carrier and the cable system in instances in which a cable system engages in such distributorship activities on behalf of a satellite carrier. In such cases, the satellite carrier has the responsibility for filing statements of account and paying royalties for publicly performing copyrighted programming under the new section 119 statutory license. Under this scheme, a cable system/distributor would segregate the subscription fees collected on behalf of the satellite carrier from those collected from cable subscribers pursuant to the section 111 cable compulsory license. The cable system would only report in its section 111 statements of account the number of cable subscribers served and the amount of gross receipts collected pursuant to section 111, and would pay royalties to section 111.

New section 119. The interim statutory license for satellite carriers

Section 119(a). The scope of the license.—Sections 119(a) (1) and (2) establish a statutory license for satellite carriers generally. A license is available where a secondary transmission of the signal of a superstation or a network station is made available by a satellite carrier to the public for private home viewing, and the carrier makes a direct charge for such retransmission service from each subscriber receiving the secondary transmission, or from a distributor (such as a cable system) that has contracted with the carrier to deliver the retransmission directly or indirectly to the viewing public.

The bill contains special provisions in sections 119(a) (2) and (5) relating to network stations in recognition of the fact that a small percentage of television households cannot now receive clear signals of the three national television networks. The bill confines the license to the so-called "white areas," that is, households not capable of receiving the signal of a particular network by conventional rooftop antennas, and which have not subscribed, within the 90 days preceding the date on which they subscribe to the satellite carrier's service, to a cable system that provides the signal of a primary network station affiliated with that network.

Utilizing the existing definition in Section 111(f), the new statutory license for retransmission of network stations applies, at the present time, exclusively to those stations owned by or affiliated with the three major commercial networks (ABC, CBS, and NBC) and the stations associated with the Public Broadcasting Service. This distinction is based upon the testimony and written materials supplied by the three commercial networks, which assert that their stations continue to occupy a special role in the television industry.

Under the bill, satellite carriers are provided a limited interim compulsory license for the sole purpose of facilitating the transmission of each network's programming to "white areas" which are unserved by that network. The Committee believes that this approach will satisfy the public interest in making available network programming in these (typically rural) areas, while also respecting the public interest in protecting the network-affiliate distribution system.

This television network-affiliate distribution system involves a unique combination of national and local elements, which has evolved over a period of decades. The network provides the advantages of program acquisition or production and the sale of advertising on a national scale, as well as the special advantages flowing from the fact that its service covers a wide range of programs throughout the broadcast day, which can be scheduled so as to maximize the attractiveness of the overall product. But while the network is typicily the largest single supplier of nationally produced programming for its affiliates, the affiliate also decides which network programs are locally broadcast; produces local news and other programs of special interest to its local audience, and creates an overall program schedule containing network, local and syndicated programming.

The Committee believes that historically and currently the network-affiliate partnership serves the broad public interest. It combines the efficiencies of national production, distribution and selling with a significant decentralization of control over the ultimate service to the public. It also provides a highly effective means whereby the special strengths of national and local program service support each other. This method of reconciling the values served by both centralization and decentralization in television broadcast service has served the country well.

The networks and their affiliates contend that the exclusivity provided an affiliate as the outlet for its network in its own market is an essential element of the overall system. They assert that by enhancing the economic value of the network service to the affiliate, exclusivity increases the affiliate's resources and incentive to support and promote the network in its competition with the other broadcast networks and the other nationally distributed broadcast and nonbroadcast program services.

The Committee intends by this provision to satisfy both aspects of the public interest—bringing network programming to unserved areas while preserving the exclusivity that is an integral part of today's network-affiliate relationship.

Section 119 requires the satellite carrier to notify the network of the retransmission of its signal by submitting to the network a list identifying the names and addresses of all subscribers to that service. In addition, on the 15th of each month the satellite carriers must submit to the network a list identifying the names and addresses of the subscribers added or dropped since the last report. These notifications are only required if the network has filed information with the Copyright Office concerning the name and address of the person who shall receive the notification. Special penalties are provided for violations by service outside the "white areas." Willful or repeated individual violations of the "white area" restrictions are subject to ordinary remedies for copyright infringement, except that no damages may be awarded if the satellite carrier took corrective action by promptly withdrawing service from ineligible subscribers, and statutory damages are limited to a maximum of $5.00 per month for each ineligible subscriber.

If the satellite carrier engages in a willful or repeated pattern or practice of violations, the court shall issue a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmission of any network station affiliated with the same network. The injunction would be applicable within the geographical area within which the violation took place—whether local, regional, or national. If the satellite carier engages in a pattern of violations, the statutory damages maximum is $250,000 for each six month period, but only with regard to persons who suscribed on or after July 7, 1988.

By amendment of section 501 of title 17, United States Code, a network station holding a license to perform a particular version of a work is treated as a legal or beneficial owner of the work if the secondary transmission by satellite carrier occurs within the local service area of the station, for purposes of infringement under section 119(a)(5).

Noncompliance with Reporting and Payment Requirements.—Section 119(a)(3) provides that a satellite carrier is also subject to full copyright liability if the carrier does not deposit the statement of account or pay the royalty required by Subsection (b) or has failed to make the submissions to the networks required by paragraph 2(c).

Discrimination by a satellite carrier.—Section 119(a)(6) provides a cause of action against a satellite carrier's "willful or repeated" retransmission of the signals of superstations and network stations to the public for private home viewing (under sections 502 through 506 and section 509 of the Copyright Act) if the satellite carrier unlawfully discriminates against any distributor.

This section is intended primarily to protect against misconduct by a satellite carrier exercising the statutory license granted by the Act. The Committee wishes to stress that this subsection, along with subsections 119(a)(3) and 119(a)(4), establish limitations on the scope of the license granted by this Act. In each case, copyright infringement remedies are provided as recourse against abuse of the license by a satellite carrier.

The Committee agrees with the assessment of the Judiciary Committee, expressed in its report on H.R. 2848, that the regulatory status under the Communications Act of the sale of superstations or network stations for private home viewing by dish owners is largely unresolved.

Some of the superstation signals will be provided under the statutory license granted by this Act by certain resale carriers that were licensed by the FCC under Title II of the Communications Act. The Commission licensed these carriers to provide common carrier transmission service of these stations to cable headends for their retransmission to cable subscribers. These transmissions are common carrier services subject to Title II of the Communications Act and the passive carrier exemption of the Copyright Act. The situation changes, however, when these carriers engage in the sale of the programming they transmit. The Commission's current rules do not address the regulatory status of these carriers when they sell the programming directly to the public.

The matter is further complicated by the fact that deregulatory initiatives over the last several years at the Commission have led to a situation in which there is unlicensed, open entry for what amounts to a C-Band direct broadcast satellite service. Some entities, such as Netlink, have entered the market as unregulated service providers, not as common carriers. They are not licensed under Title II of the Communications Act, but they will qualify for the statutory license under this Act and will provide superstation and network stations in the same home earth station market as their competitors, the Title II carriers.

The resolution of these issues must rest with the Commission. The Committee does not wish to prejudge or direct the FCC's resolution of these questions with the enactment of this legislation. However, the Committee is aware that neither the Communications Act nor the FCC's current rules currently bar discrimination against distributors of superstation or network station signals for private viewing.

Nothing in this Act affects the authority of the Commission to promulgate rules to address such discrimination and, in fact, this legislation amends the Communications Act with a new Section 713 directing the FCC to examine whether and to what extent such discrimination actually occurs. If the Commission finds regulations on discrimination against distributors of superstations and network stations to home earth stations to be necessary and in the public interest, it may establish such rules.

The Committee notes that the term "discrimination" as it is used in section 119(a)(6) of the Copyright Act is expressly limited to discrimination within the jurisdiction of the Commission pursuant to the Communications Act. The purpose of section 119(a)(6) is to make certain discriminatory acts involving particular parties actionable under the Copyright Act. In adopting this language, the Committee does not intend the Commission to address issues and concerns that are outside its juridiction and expertise.

Geographic limitation.—Section 119(a)(7) provides that the statutory license created in section 119 applies only to secondary transmissions to households located in the United States, or any of its territories, trust possessions, or possessions. This section parallels section 111(f) or title 17, United States Code, which applies to cable television.

Section 119(b). Operation of the statutory license for satellite carriers

Requirements for a license.—The statutory license provided for in section 119(a) is contingent upon fulfillment of the administrative requirements set forth in section 119(b)(1). That provision directs satellite carriers whose retransmissions are subject to licensing under section 119(a) to deposit with the Register of Copyrights a semiannual statement of account and royalty fee payment. The dates for filing such statements of account and royalty fee payments and the six-month period which they are to cover are to be determined by the Register of Copyrights.

The statutory royalty fees set forth in section 119(b)(1)(B) are twelve cents per subscriber per superstation signal retransmitted and three cents for each subscriber for each network station retransmitted. These fees approximate the same royalty fees paid by cable households for receipt of similar copyrighted signals and are modeled on those contained in the 1976 Copyright Act. Royalty fees for retransmission of a network station would be 1/4 those of an independent station, since "the viewing of non-network programs on network stations is considered to approximate 25 percent." H. Rept. 94-1476, 94th Congress, 2d Session (1976). The copyright owners of these non-network programs would be entitled to receive compensation for the retransmission of the programs to "white areas". Owners of copyright in network programs would not be entitled to compensations for such retransmissions, since those copyright owners are compensated for national distribution by the networks when the programming is acquired. The statutory fees set forth in this section apply only in the limited circumstances described in section 119(c).

Collection and distibution of royalty fees.—Section 119(b)(2) provides that royalty fees paid by satellite carriers under the statutory license shall be received by the Register of Copyrights and, after the Register deducts the reasonable cost incurred by the Copyright Office in administering the license, deposited in the Treasury of the United States. The fees are distributed subsequently, pursuant to the determination of the Copyright Royalty Tribunal under chapter 8 of the Copyright Act of 1976.

Persons to whom fees are distributed.—The copyright owners entitled to participate in the distribution of the royalty fees paid by satellite carriers under the license are specified in section 119(b)(3).

Procedures for distribution.—Section 119(b)(4) sets forth the procedure for the distribution of the royalty fees paid by satellite carriers, which parallels the distribution procedure under the section III cable compulsory license. During the month of July of each year, every person claiming to be entitled to license fees must file a claim with the Copyright Royalty Tribunal, in accordance with such provisions as the Tribunal shall establish. The claimants may agree among themselves as to the division and distribution of such fees.

After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether a controversy exists concerning the distribution of royalty fees. If no controversy exists, the Tribunal—after deducting reasonable administrative costs—shall distribute the fees to the copyright owners entitled or their agents. If the Tribunal finds the existence of a controversy, it shall, pursuant to the provisions of chapter 8, conduct a proceeding to determine the distribution of royalty fees.

The bill does not include specific provisions to guide the Copyright Royalty Tribunal in determining the appropriate division among competing copyright owners of the royalty fees collected from satellite carriers under section 119.

Secion 119(c) Alternative methods for determining royalty fees applicable during two phases of the statutory license for satellite carriers

The bill establishes a four-year phase and a two-year phase for the statutory license for satellite carriers; in each phase the royalty fee is determined in a different manner. In the first (four year) phase, pursuant to section 119(c)(1), the statutory fees established in section 119(b)(1)(B) (twelve cents per subscriber per superstation signal retransmitted and three cents per subscriber per network signal retransmitted) shall apply. The first phase shall be in effect from January 1, 1989, until December 31, 1992. In the second phase, the fee shall be set by the voluntary negotiation or compulsory arbitration procedures established in section 119(c)(2) and 119(c)(3).

Section 119(c)(2) requires the Copyright Royalty Tribunal to initiate voluntary negotiation proceedings betwen satellite carriers, distributors, and copyright owners, eighteen months before the bill's first phase runs out, to encourage the parties to negotiate a fee for the second phase before the statutory fee expires. The parties may designate common agents to negotiate, agree to, or pay the relevant fees; if the parties fail to do so, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties. The costs of the negotiation proceeding shall be paid by the parties. If the parties reach a voluntary agreement, copies of the agreement must be filed in a timely manner with the Copyright Office, and the negotiated fee will remain in effect from the date specified in the agreement until December 31, 1994.

If some or all of the parties have not voluntarily negotiated a fee for the second phase by December 31, 1991, twelve months before the expiration of the first phase, section 119(c))3) provides that the Copyright Royalty Tribunal shall initiate a compulsory arbitration proceeding for the purpose of determining a reasonable royalty fee to be paid under section 119 for the second phase. The Tribunal shall publish notice of the initiation of the proceeding as well as a list of potential arbitrators. Within ten days of the publication of this notice, one arbitrator must be chosen by the copyright owners and one by the satellite carriers and their distributors. The two arbitrators must choose a third arbitrator from the same list within ten days.

The three arbitrators (Arbitration Panel) shall have sixty days from the publication of the initial notice to conduct an arbitration proceeding and to determine a royalty fee, using guidelines specified in the bill. All costs involved in this proceeding must be paid for by the parties. The Arbitration Panel shall submit its determination in the form of a report, along with the written record, to the Copyright Royalty Tribunal. The Tribunal shall have sixty days to review the report and either accept or reject the Panel's determination and publish the action in the Federal Register. If the Tribunal rejects the determination, the Tribunal shall, within the same sixty day period, issue an order setting the royalty fee. Thus, within 120 days of the publication of the initial notice, a new royalty fee shall be determined through a compulsory arbitration procedure, to be effective from January 1, 1993, until December 31, 1994, or until modified by the United States Court of Appeals for the District of Columbia Circuit pursuant to section 199(c)(4). The fee shall apply to all copyright owners, satellite carriers, and distributors not party to a voluntary agreement.

Section 119(c)(3)(D) provides guidelines by which the Arbitration Panel shall determine royalty fees. In particular, the Panel must consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station.

Section 199(c)(4) provides that the rate adopted or determined by the Copyright Royalty Tribunal pursuant to the compulsory arbitration proceeding may be appealed to the District of Columbia Circuit Court of Appeals within thirty days of publication. However, while appeal of the rate is pending, satellite carriers would still be required to deposit statements of account and royalties and to pay royalty fees calculated under the rate that is at issue on appeal. The bill gives the court jurisdiction to enter its own determination with respect to the royalty rate, to order the repayment of any excess fees deposited under section 119(b)(1)(B), and to order the payment of any underpaid fees with interest, in accordance with its final judgement. The court may also vacate the Tribunal's decision and remand the case for further arbitration proceedings.

Section 119(d) Definitions

A "distributor" is defined as any entity which contracts with a carrier to distribute secondary transmissions received from the carrier either as a single channel, or in a package with other programming, to individual subscribers for a private home viewing, either directly or indirectly through other program distribution entities.

The term "primary transmission" and secondary transmission" are defined so as to have the same meaning under section 119 as they have under section 111.

The term "private home viewing" is defined as viewing, for private use in an individual's household by means of equipment which is operated by such individual and which serves only such individual's household, of a secondary transmission delivered by satellite of a primay transmission of a television broadcast station licensed by the FCC.

A "satellite carrier" is broadly defined as an entity that uses the facilities of a domestic satellite service licensed by the FCC and that owns or leases a capacity or service on a satellite in order to provide the point-to-multipoint relay of television station signals to numerous receive-only earth stations, except to the extent the entity provides such distribution pursuant to tariff that is not restricted to private home viewing.

The term "network station" has the same meaning as the term in section 111(f) and includes a translator station or terrestrial satellite station that rebroadcasts the network station.

A "primary network station" is a network station that broadcasts the basic programming service of one particular national network.

The term "subscriber" is defined as an individual who receives a secondary transmission service for private home viewing by means of a satellite transmission under section 119, and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

A "superstation" is defined as a television broadcast station, other than a network station, that is licensed by the Federal Communications Commission and that is retransmitted by a satellite carrier.

The term "unserved household" means a household that with respect to a particular television network, (A) cannot receive, through use of a conventional outdoor antenna, a signal of Grade B intensity (as defined by the FCC, currently in 47 C.F.R. section 73.683(a)) of a primary network station affiliated with that network, and (B) has not, within 90 days before the date on which the household subcribes (initially or upon renewal) to receive by satellite a network station affiliated with tht network subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

Because the household must be able to receive the signal of a "primary" network station to fall outside the definition of unserved household, a household that is able to receive only the signal of a secondary network station, which would be defined as "unserved" if it is a station affiliated with two or more networks that does not broadcast or rebroadcast the basic programming service of any single national network.

Section 119(e) Exclusivity of the statutory license

The bill explicitly provides that neither the cable compulsory license, nor the exemptions of section 111 (such as the passive carrier exemption) can be construed during the six-year statutory license period to apply to secondary transmissions by satellite carrier for private home viewing of programming contained in a superstation or network station transmission. Unless the statutory license of section 119 is obtained, during the six-year interim period the secondary transmission by satellite carrier for private home viewing can take place only with consent of the copyright owner.

SECTION 3. SYNDICATED EXCLUSIVITY; REPORT ON DISCRIMINATION

Section 3 amends Title VII of the Communications Act by adding several new sections as follows:

Section 712(1) Syndicated Exclusivity

The bill directs the Federal Communications Commission (FCC), within 120 days after the date of enactment, to undertake a combined inquiry and rulemaking proceeding regarding the feasibility of imposing syndicated exclusivity rules for private home viewing. The Committee believes strongly that it is necessary and appropriate that the Commission undertake this Inquiry pursuant to its authority under the Communications Act. The FCC has had sole responsibility for addressing and administering the syndicated exclusivity rules in the past, and will continue to have sole responsibility under this legislation.

Free local over-the-air television stations continue to play an important role in providing the American people information and entertainment. The Committee is concerned that changes in technology, and accomplaying changes in law and regulation, do not undermine the base of free local television service upon which the American people continue to rely. The Committee is concerned that retransmissions of broadcast television programming to home earth stations could violate the exclusive program contracts that have been purchased by local television stations. Depriving local stations of the ability to enforce their program contracts could cause an erosion of audiences for such local stations because their programming would no longer be unique and distinctive.

Accordingly, the Committee directs the Federal Communications Commission to consider the feasibility of imposing syndicated exclusivity rules with respect to satellite retransmission of television broadcast programming. In the Committee's view, it is reasonable to premise a grant of a statutory license on the existence of appropriate safeguards to protect the rights of other parties who might be affected by the grant of such statutory licenses.

The Committee also believes that while some adjustments may be necessary or appropriate to reflect the differences between cable and satellite technologies, the cable television syndicated exclusivity rules could serve as a model for rules governing the satellite industry.

The Committee directs the Commission to undertake a comprehensive assessment of the feasibility of imposing syndicated exclusivity. The Inquiry should be broadbased and balanced. The mere fact that imposition of, or compliance with, syndicated exclusivity rules might be incrementally more costly for satellite carriers shall not be deemed to render such rules as not "feasible" as that term is used in this section.

Section 712(2)

In the event the Commission adopts rules imposing syndicated exclusivity for private home viewing, the bill provides that violations of such rules shall be subject to the remedies, sanctions and penalties under Title V and Section 705 of the Communications Act.

The Committee amendment clarifies that violations of the syndicated exclusivity rules are to be enforced by the sanctions and penalties provided in the Communications Act.

Section 713 Discrimination

The bill directs the FCC within a year of the enactment of this Act, to prepare and submit a report to the Senate Committee on Commerce, Science and Transportation and the House Committee on Energy and Commerce on whether, and the extent to which, there exists unlawful discrimination against distributors of secondary transmissions from satellite carriers.

The Committee notes that the term "discrimination" as it is used in new Section 713 of the Communications Act and new Section 119(a)(6) of the Copyright Act is expressly limited to discrimination within the jurisdiction of the Commission pursuant to the Communications Act. The purpose of Section 119(a)(6) is to make certain discriminatory acts involving particular parties actionable under the Copyright Act. In adopting this language, the Committee does not intend the Commission to address issues and concerns that are outside its jurisdiction and expertise.

SECTION 4. INQUIRY ON ENCRYPTION STANDARD

This section amends section 705 of the Communications Act to require the FCC, within six months after the date of enactment of this legislation, to initiate an inquiry concerning the need for a universal encryption standard that permits the decryption of satellite cable programming intended for private viewing by home satellite antenna users.

The FCC currently has no such standards. To date, this situation has not created a significant problem because, to the Committee's knowledge, all satellite cable programming networks that have scrambled have done so using the VideoCipher II technology developed by General Instrument Corp. Any home satellite earth station owner presently need only purchase a single descrambling unit, either as a stand-alone module or built into their satellite systems, in order to descramble any programming service they might wish to purchase.

Recently, however technological and market developments raise the possibility that this situation may change. Manufacturers are developing new decryption technologies for the market. General Instrument Corp. and other companies are working on decryption systems that mnay provide programmers with greater signal security and home earth station owners with greater descrambling capacity.

The Committee believes that more information is needed to determine whether a universal, decryption standard is needed or would be helpful. Accordingly, the Commission is instructed to begin an Inquiry that will take into account consumer costs and benefits; the incorporation of technological enhancements, including advanced television formats; whether such standard would be effective in preventing present and future unauthorized decryption of satellite programming; the costs and benefits of such standard on other authorized users of encrypted satellite cable programming, including cable and Satellite Master Antenna Television (SMATV) systems; the impact of any market disruption that would occur because of the time delays necessary for the establishment of such standard by the Commission; and the effect of such standard on competition in the manufacture of decryption equipment.

If the Commission finds, as a result of the information gathered from the Inquiry and from other information before the Commission, that a universal encryption standard is in the public interest, the Committee intends for the Commission to move immediately to initiate a rulemaking to establish such a standard.

SECTION 5. PIRACY OF SATELLITE CABLE PROGRAMMING

Section 5 of the Act amends Section 705 of the Communications Act pertaining to the piracy of satellite cable programming. The Committee's amendment is intended to deter piracy practices by (1) stiffening applicable civil and criminal penalties, (2) expanding standing to sue, and (3) making the manufacture, sale, modification, importation, exportation, sale or distribution of devices or equipment with knowledge that its primary purpose is to assist in unauthorized decryption of satellite cable programming expressly actionable as a criminal act.

The Committee believes these changes are essential to preserve the longterm viability of the TVRO industry. It has been estimated than more than one-third of the one million VideoCipher III descramblers (the industry's *de factor* standard) sold by manufacturer General Instrument have been compromised by black market decoding chips. Unquestionably, piracy is costing those who hold rights in satellite-delivered cable programming tens of millions of dollars in revenues.

The piracy problem is rampant both among commercial users of the VideoCipher II (hotels, lounges, and other establishments) and among private home users. The depth of the problem is such that there has been a steady increase in the number of new prosecutions and civil suits brought against alleged "pirates."

The Committee wants to give both prosecutors and civil plaintiffs the legal tools they need to bring piracy under control. The Committee commends and encourages inter-industry effort to deal with piracy, and believes the new remedies and increased penalties adopted through this provision will contribute to these important efforts.

The Committee has noted reports that the Federal Bureau of Investigation has notified FBI field offices, through its Manual of Investigative and Operational Guidelines (MIOG), that investigating satellite signal theft is "not a top priority." The Committee admonishes relevant authorities and government entities, including the FBI, to expend the resources necessary to attack massive and increasing levels of piracy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

Sec.
101 Definitions.

* * * * * * *

119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing.

* * * * * * *

§111. Limitations on exclusive rights: Secondary transmissions

(a) CERTAIN SECONDARY TRANSMISSIONS EXEMPTED.—The secondary transmission of a primary transmission embodying a performance or display of a work is not an infringement of copyright if—

(1) * * *

* * * * * * *

(3) the secondary transmission is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others: *Provided*. That the provisions of this clause extend only to the

activities of said carrier with respect to secondary transmission and do not exempt from liability the activities of others respect to their own primary or secondary transmissions: [or]

(4) the secondary transmission is made by a satellite carrier for private home viewing purusant to a statutory license under section 119; or

[(4)(5)] the secondary transmission is not made by a cable system but is made by a governmental body, or other nonprofit organization, without any purpose of direct or indirect commercial advantage; and without charge to the recipients of the secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

* * * * * * *

(d) COMPULSORY LICENSE FOR SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—(1) A cable system whose secondary transmissions have been subject to compulsory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), prescribe by regulation—

(A) a statement of account, covering the six months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, and such other data as the Register of Copyrights may after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), from time to time prescribe by regulation. *In determining the total number of subcribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subcribers and amounts collected from subcribers receiving secondary transmissions for private home viewing pusuant to section 119.* Such statement shall also include a special statement of account covering any non-network television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs showing the times, dates, stations, and programs involved in such substituted or added carriage; and

§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) SUPERSTATIONS.—Subject to the provisions of paragraphs (3), (4), and (6) of this subsection, secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing.

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection, secondary transmission of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct charge for such retransmission service to each subscriber receiving the secondary transmission.

(B) SECONDARY TRANSMISSION TO UNSERVED HOUSEHOLDS.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households.

(C) NOTIFICATION TO NETWORKS.—A satellite carrier that makes secondary transmissions of a primary transmission by a network station pursuant to subparagraph (A) shall, 90 days after the effective date of the Satellite Home Viewer Act of 1988, or 90 days after commencing such secondary transmission, whichever is later, submit to the network that owns or is affiliated with the network station a list identifying (by street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission. Thereafter, on the 15th day of each month, the satellite carrier shall submit to the network a list identifying (by street address, including county and zip code) any person who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights, on or after the effective date of the Satellite Home Viewer Act of 1988, a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraphs (1) and

(2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C)./

(4) WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

(5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.—

(A) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

(ii) any statutory damages shall not exceed $5 for such subscriber for each month during which the violation occurred.

(B) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, or the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000

for each 6-month period during which the pattern or practice was carried out; and

(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out.

(C) PREVIOUS SUBSCRIBERS EXCLUDED.—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before July 7, 1988.

(6) DISCRIMINATION BY A SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

(7) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States, or any of its territories, trust territories, or possessions.

(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal, prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal, from time to time prescribe by regulation; and

(B) a royalty fee for that 6-month period, computed by—

(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 12 cents;

(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 3 cents; and

(iii) adding together the totals from clauses (i) and (ii).

(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title.

(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Tribunal under paragraph (4).

(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, the Tribunal shall, after deducting reasonable administrataive costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Tribunal finds the existence of a controversy, the Tribunal shall, pursuant to chapter 8 of this title, conduct a proceding to determine the distribution of royalty fees.

(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(c) DETERMINATION OF ROYALTY FEES.—

(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The rate of the royalty fees payable under subsection (b)(1)(B) shall be effective until December 31, 1992, unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection. After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragarphs (3) and (4).

(2) FEE SET BY VOLUNTARY NEGOTIATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before July 1, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers sunder subsection (b)(1)(B).

(B) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

(C) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be bindiang upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

(D) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1994.

(3) FEE SET BY COMPULSORY ARBITRATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before December 31, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2). Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organisation as the Tribunal shall select.

(B) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by copyright owners who claim to be entitled to royalty fees under subsection (b)(4) and who are not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement. The two arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators. If either group fails to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fail to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively. The arbitrators selected under this paragraph shall constitute an Arbitration Panel.

(C) ARBITRATION PROCEEDING.—The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4), any satellite carrier, and any distributor, who is not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

(D) FACTORS FOR DETERMINING ROYALTY FEES.—In determining royalty fees under this paragraph, the Arbitration Panel shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing. The fee shall also be calculated to achieve the following objectives:

(i) To maximize the availability of creative works to the public.

(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new

markets for creative expression and media for their communication.

(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

(E) REPORT TO COPYRIGHT ROYALTY TRIBUNAL.—Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D).

(F) ACTION BY COPYRIGHT ROYALTY TRIBUNAL.—Within 60 days after receiving the report of the Arbitration Panel under subparagraph (E), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in subparagraph (D). If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph. The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence). The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate. The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying.

(G) PERIOD DURING WHICH DECISION OF PANEL OR ORDER OF TRIBUNAL EFFECTIVE.—The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become effective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F), and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994.

(H) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee adopted or ordered under subparagraph (F) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2).

(4) JUDICIAL REVIEW.—Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United

States Court of Appeals for the District of Columbia Circuit within 30 days after the publication of the decision in the Federal Register. The pendency of an appeal under this paragraph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royalty fees specified in that subsection. The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in paragraph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner. If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3).

(d) DEFINITIONS.—As used in this section—

(1) DISTRIBUTOR.—The term "distributor" means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities.

(2) NETWORK STATION.—The term "network station" has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station.

(3) PRIMARY NETWORK STATION.—The term "primary network station" means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

(4) PRIMARY TRANSMISSION.—The term 'primary transmission' has the meaning given that term in section 111(f) of this title.

(5) PRIVATE HOME VIEWING.—The term "private home viewing" means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

(6) SATELLITE CARRIER.—The term "satellite carrier" means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

(7) SECONDARY TRANSMISSION.—The term "secondary transmission" has the meaning given that term in section 111(f) of this title.

(8) SUBSCRIBER.—The term "subscriber" means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(9) SUPERSTATION.—The term "superstation" means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.

(10) UNSERVED HOUSEHOLD.—The term "unserved household", with respect to a particular television network, means a household that—

(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

(e) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner.

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

* * * * * * *

§ 501. Infringement of copyright

(a) * * *

* * * * * * *

(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

* * * * * * *

CHAPTER 8—COPYRIGHT ROYALITY TRIBUNAL

§ 801. Copyright Royalty Tribunal: Establishment and purpose

(a) There is hereby created an independent Copyright Royalty Tribunal in the legislative branch.

(b) Subject to the provisions of this chapter, the purposes of the Tribunal shall be—

(1) * * *

* * * * * * *

(3) to distribute royalty fees deposited with the Register of Copyrights under sections 111 [and 116], *116, and 119(b),* and to determine, in cases where controversy exists, the distribution of such fees.

* * * * * * *

§ 804. Institution and conclusion of proceedings

(a) * * *

* * * * * * *

(d) With respect to proceedings under section 801(b)(3), concerning the distribution of royalty fees in certain circumstances under [sections 111 or 116], *section 111, 116, or 119,* the Chairman of the Tribunal shall, upon determination by the Tribunal that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

* * * * * * *

COMMUNICATIONS ACT OF 1934

* * * * * * *

TITLE VII—MISCELLANEOUS PROVISIONS

* * * * * * *

UNAUTHORIZED PUBLICATION OF COMMUNICATIONS

SEC. 705. (a) * * *

* * * * * * *

(c)(1) For purposes of this section—

* * *

* * * * * * *

(4) the term "private vewing" means the viewing for private use in an individual's dwelling unit by means of equipment, owned or operated by such individual, capable of receiving satellite cable programming directly from a satellite; [and]

(5) the term "private financial gain" shall not include the gain resulting to any individual for the private use of such individual's dwelling unit of any programming for which the individual has not obtained authorization for that use[.] *; and*

(6) term "any person aggrieved" shall include any person with proprietary rights in the intercepted communication by wire or

radio including wholesale or retail distributors of satellite cable programming, and, in the case of a violation of paragraph (4) of subsection (d), shall also include any person engaged in the lawful manufacture, distribution, or sale of equipment necessary to authorize or receive satellite cable programming.

(d)(1) Any person who willfully violates subsection (a) shall be fined not more than [$1,000] *$2,000* or imprisoned for not more than 6 months, or both.

(2) Any person who violates subsection (a) willfully and for purposes of direct or indirect commercial advantage or private financial gain shall be fined not more than [$25,000 or imprisoned for not more than 1 year, or both, for the first such conviction and shall be fined not more than $50,000 or imprisoned for not more than 2 years, or both, for any subsequent conviction.] *$50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than $100,000 or imprisoned for not more than 5 years, or both, for any subsequent conviction.*

(3)(A) Any person aggrieved by any violation of subsection (a) *or paragraph (4) of subsection (d)* may bring a civil action in a United States district court or in any other court of competent jurisdiction.

(B)The court [may]—

(i) *may* grant temporary and final injuctions on such terms as it may deem reasonable to prevent or restrain violations of subsection (a);

(ii) *may* award damages as described in subparagraph (C); and

(iii) *shall* direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails.

(C)(i) Damages awarded by any court under this section shall be computed, at the election of the aggrieved party, in accordance with either of the following subclauses;

(I) the party aggrieved may recover the actual damages suffered by him as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages; in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation; or

(II) the party aggrieved may recover an award of statutory damages for each violation *of subsection (a)* involved in the action in a sum of not less than [$250] *$1,000* or more than $100,000, as the court considers just *, and for each violation of paragraph (4) of this subsection (d) involved in the action an aggrieved party may recover statutory damages in a sum not less than $10,000, or more than $100,000, as the court considers just.*

(ii) In any case in which the court finds that the violation was committed willfully and for purposes of direct or indirect commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory, by an amount of not more than [$50,000] *$100,000 for each violation of subsection (a).*—

(iii) In any case where the courts finds that the violator was not aware and had no reason to believe that his acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than [$100.] *$250.*

[(4) The importation, manufacture, sale, or distribution of equipment by any person with the intent of its use to assist in any activity prohibited by subsection (a) shall be subject to penalties and remedies under this subsection to the same extent and in the same manner as a person who has engaged in such prohibited activity.]

(4) Any person who manufactures, assembles, modifies imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or is intended for any other activity prohibited by subsection (a), shall be fined not more than $500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both. For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.

* * * * * * *

(f) Within 6 months after the date of enactment of the Satellite Home Viewer Act of 1988, the Federal Communications Commission shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing. In conducting such inquiry, the Commission shall take into acount—

(1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation;

(2) incorporation of technological enhancements, including advanced television formats;

(3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming;

(4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems;

(5) the effect of any such standard on competition in the manufacture of decryption equipment; and

(6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards.

(g) If the Commission finds, based on the information gathered from the inquiry required by subsection (f) that a universal encryption standard is necessary in the public interest, the Commission shall initiate a rulemaking to establish such a standard.

* * * * * * *

SYNDICATED EXCLUSIVITY

Sec. 712. (a) The Federal Communications Commission shall, within 120 days after the effective date of the Satellite Home

Viewer Act of 1988, initiate a combined inquiry and rulemaking proceeding for the purpose of—

(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of snydicated programming (as defined by the Commission) for private viewing (as defined in section 705 of this Act) similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television; and

(2) adopting such rules if the Commission considers the imposition of such rules to be feasible.

(b) In the event that the Commission adopts such rules, any willful and repeated secondary transmission made by a satellite carrier to the public of a primary transmission embodying the performance or display of a work which violates such Commission rules shall be subject to the remedies, sanctions, and penalties provided by title V and section 705 of this Act.

DISCRIMINATION

SEC. 713. The Federal Communications Commission shall, within 1 year after the effective date of the Satellite Home Viewer Act of 1988, prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on whether, and the extent to which, there exists discrimination described in section 119(a)(6) of title 17, United States Code.

ADDITIONAL VIEWS ON H.R. 2848 BY MR. TAUZIN

I applaud the Committee for taking this vital step to insure the availability of broadcast signals to the more than two million dish owners in America. Because many of those dishes are located in rural areas where access to broadcast signals is limited, this legislation will make available for the first time, a luxury most of us take for granted—network news.

Competition in the sale of home satellite dish programming has been a concern of mine and many members of the Committee since the first signal was scrambled. Without it, there is little incentive for cable programmers to provide dish owners with the same consumer choices of program packages at fair and reasonable prices that cable subscribers now enjoy. H.R. 1885, the Satellite Television Fair Marketing Act, which I introduced and 124 Members cosponsored this Congress, sought to encourage the sale of programming to third party packagers. While we have not been successful in its enactment, its existence has served as a catalyst to encourage cable programmers to negotiate and sign contracts with third party program packagers. The National Rural Telecommunications Cooperative (NRTC) signed programming agreements the day of H.R. 1885 Subcommittee markup, making it the first third-party program packager to establish long-term contractual relationships with major programming services. The development of this package is a positive event in the evolution of the home dish market and has hopefully let the "Genie of competition" out of the bottle and into the marketplace.

We will be monitoring the Genie to see whether he flourishes in the marketplace or withers and retreats to the bottle.

BILLY TAUZIN.

(44)

S. 1883

One Hundredth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-fifth day of January,
one thousand nine hundred and eighty-eight

An Act

To amend the Act entitled "An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—TRADEMARK LAW REVISION

SEC. 101. SHORT TITLE.

This title may be cited as the "Trademark Law Revision Act of 1988".

SEC. 102. REFERENCE TO THE TRADEMARK ACT OF 1946.

Except as otherwise expressly provided, whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1051 and following) (commonly referred to as the "Trademark Act of 1946").

SEC. 103. APPLICATION TO REGISTER TRADEMARKS.

Section 1 (15 U.S.C. 1051) is amended—

(1) in the matter before subsection (a), by striking out "may register his" and inserting in lieu thereof "may apply to register his or her";

(2) by redesignating paragraphs (1), (2), and (3) of subsection (a) as subparagraphs (A), (B), and (C), respectively;

(3) by redesignating subsections (a), (b), and (c) as paragraphs (1), (2), and (3), respectively;

(4) by inserting "(a)" after "Section 1.";

(5) in subsection (a)(1)(A), as redesignated by this section—

(A) by striking out "applied to" and inserting in lieu thereof "used on or in connection with"; and

(B) by striking out "goods in connection" and inserting in lieu thereof "goods on or in connection";

(6) in subsection (a)(1)(C), as redesignated by this section, by striking out "actually";

(7) in subsection (a)(2), as redesignated by this section, by striking out "filing" and inserting in lieu thereof "prescribed";

(8) by redesignating subsection (d) as subsection (e); and

(9) by inserting before subsection (e), as redesignated by paragraph (8) of this section, the following:

"(b) A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may apply to register the trademark under this Act on the principal register hereby established:

"(1) By filing in the Patent and Trademark Office—

"(A) a written application, in such form as may be prescribed by the Commissioner, verified by the applicant, or by a member of the firm or an officer of the corporation or association applying, specifying applicant's domicile and citizenship, applicant's bona fide intention to use the mark in commerce, the goods on or in connection with which the applicant has a bona fide intention to use the mark and the mode or manner in which the mark is intended to be used on or in connection with such goods, including a statement to the effect that the person making the verification believes himself or herself, or the firm, corporation, or association in whose behalf he or she makes the verification, to be entitled to use the mark in commerce, and that no other person, firm, corporation, or association, to the best of his or her knowledge and belief, has the right to use such mark in commerce either in the identical form of the mark or in such near resemblance to the mark as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive; however, except for applications filed pursuant to section 44, no mark shall be registered until the applicant has met the requirements of subsection (d) of this section; and

"(B) a drawing of the mark.

"(2) By paying in the Patent and Trademark Office the prescribed fee.

"(3) By complying with such rules or regulations, not inconsistent with law, as may be prescribed by the Commissioner.

"(c) At any time during examination of an application filed under subsection (b), an applicant who has made use of the mark in commerce may claim the benefits of such use for purposes of this Act, by amending his or her application to bring it into conformity with the requirements of subsection (a).

"(d)(1) Within six months after the date on which the notice of allowance with respect to a mark is issued under section 13(b)(2) to an applicant under subsection (b) of this section, the applicant shall file in the Patent and Trademark Office, together with such number of specimens or facsimiles of the mark as used in commerce as may be required by the Commissioner and payment of the prescribed fee, a verified statement that the mark is in use in commerce and specifying the date of the applicant's first use of the mark in commerce, those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce, and the mode or manner in which the mark is used on or in connection with such goods or services. Subject to examination and acceptance of the statement of use, the mark shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued for those goods or services recited in the statement of use for which the mark is entitled to registration, and notice of registration shall be published in the Official Gazette of the Patent and Trademark Office. Such examination may include an examination of the factors set forth in subsections (a) through (e) of section 2. The notice of registration shall specify the goods or services for which the mark is registered.

"(2) The Commissioner shall extend, for one additional 6-month period, the time for filing the statement of use under paragraph (1), upon written request of the applicant before the expiration of the 6-month period provided in paragraph (1). In addition to an extension under the preceding sentence, the Commissioner may, upon a showing of good cause by the applicant, further extend the time for filing the statement of use under paragraph (1) for periods aggregating not more than 24 months, pursuant to written request of the applicant made before the expiration of the last extension granted under this paragraph. Any request for an extension under this paragraph shall be accompanied by a verified statement that the applicant has a continued bona fide intention to use the mark in commerce and specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce. Any request for an extension under this paragraph shall be accompanied by payment of the prescribed fee. The Commissioner shall issue regulations setting forth guidelines for determining what constitutes good cause for purposes of this paragraph.

"(3) The Commissioner shall notify any applicant who files a statement of use of the acceptance or refusal thereof and, if the statement of use is refused, the reasons for the refusal. An applicant may amend the statement of use.

"(4) The failure to timely file a verified statement of use under this subsection shall result in abandonment of the application.".

SEC. 104. TRADEMARKS REGISTRABLE ON PRINCIPAL REGISTER.

Section 2 (15 U.S.C. 1052) is amended—

(1) by amending subsection (d) to read as follows:

"(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided*, That if the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods on or in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (1) the earliest of the filing dates of the applications pending or of any registration issued under this Act; (2) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (3) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Use prior to the filing date of any pending application or a registration shall not be required when the owner of such application or registration consents to the grant of a concurrent registration to the applicant. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods on or in connection with which such mark is registered to the respective persons.";

(2) in subsection (e) by striking out "applied to" each place it appears and inserting in lieu thereof "used on or in connection with"; and

(3) in subsection (f)—

(A) by striking out "applied to" and inserting in lieu thereof "used on or in connection with"; and

(B) by striking out "five years" and all that follows through the end of the subsection and inserting in lieu thereof "five years before the date on which the claim of distinctiveness is made.".

SEC. 105. SERVICE MARKS REGISTRABLE.

Section 3 (15 U.S.C. 1053) is amended—

(1) in the first sentence—

(A) by striking out "used in commerce"; and

(B) by striking out ", except when" and all that follows through "mark is used"; and

(2) by striking out the second sentence.

SEC. 106. COLLECTIVE AND CERTIFICATION MARKS REGISTRABLE.

Section 4 (15 U.S.C. 1054) is amended—

(1) in the first sentence—

(A) by striking out "origin used in commerce," and inserting in lieu thereof "origin,"; and

(B) by striking out "except when" and inserting in lieu thereof "except in the case of certification marks when"; and

(2) by striking out the second sentence.

SEC. 107. USE BY RELATED COMPANIES.

Section 5 (15 U.S.C. 1055) is amended by adding at the end thereof the following: "If first use of a mark by a person is controlled by the registrant or applicant for registration of the mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of the registrant or applicant, as the case may be.".

SEC. 108. DISCLAIMER OF UNREGISTRABLE MATTER.

Section 6(b) (15 U.S.C. 1056(b)) is amended by striking out "paragraph (d)" and inserting in lieu thereof "subsection (e)".

SEC. 109. CERTIFICATE OF REGISTRATION ON THE PRINCIPAL REGISTER.

Section 7 (15 U.S.C. 1057) is amended—

(1) by amending subsection (b) to read as follows:

"(b) A certificate of registration of a mark upon the principal register provided by this Act shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.";

(2) by redesignating subsections (c), (d), (e), (f), and (g) as subsections (d), (e), (f), (g), and (h), respectively;

(3) by inserting after subsection (b) the following:

"(c) Contingent on the registration of a mark on the principal register provided by this Act, the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect, on or in connection with the goods or services specified in the registration against any other person except for a person whose mark has not been abandoned and who, prior to such filing—

"(1) has used the mark;

"(2) has filed an application to register the mark which is pending or has resulted in registration of the mark; or

"(3) has filed a foreign application to register the mark on the basis of which he or she has acquired a right of priority, and timely files an application under section 44(d) to register the mark which is pending or has resulted in registration of the mark.";

(4) in subsection (d), as redesignated by paragraph (2) of this section, by striking out "fee herein provided" and inserting in lieu thereof "prescribed fee";

(5) in subsection (f), as redesignated by paragraph (2) of this section, by striking out "fee required by law" and inserting in lieu thereof "prescribed fee"; and

(6) in subsection (h), as redesignated by paragraph (2) of this section, by striking out "required fee" and inserting in lieu thereof "prescribed fee".

SEC. 110. DURATION OF REGISTRATION.

Section 8(a) (15 U.S.C. 1058(a)) is amended—

(1) by striking out "twenty" and inserting in lieu thereof "ten"; and

(2) by striking out "showing that said mark is in use in commerce or showing that its" and inserting in lieu thereof "setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching to the affidavit a specimen or facsimile showing current use of the mark, or showing that any".

SEC. 111. RENEWAL OF REGISTRATION.

Section 9 (15 U.S.C. 1059) is amended—

(1) in subsection (a) by striking out "twenty" and inserting in lieu thereof "ten"; and

(2) in subsection (c) by striking out "1(d) hereof" and inserting in lieu thereof "1(e) of this Act".

SEC. 112. ASSIGNMENT.

Section 10 (15 U.S.C. 1060) is amended—

(1) in the first sentence by striking out "and in any such assignment" and inserting in lieu thereof the following: ". However, no application to register a mark under section 1(b) shall be assignable prior to the filing of the verified statement of use under section 1(d), except to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. In any assignment authorized by this section"; and

(2) in the last paragraph by striking out "1(d) hereof" and inserting in lieu thereof "1(e) of this Act".

SEC. 113. EXAMINATION OF APPLICATION.

Section 12(a) (15 U.S.C. 1062(a)) is amended—

(1) by striking out "fee herein provided" and inserting in lieu thereof "prescribed fee"; and

(2) by striking out "to registration, the" and inserting in lieu thereof "to registration, or would be entitled to registration upon the acceptance of the statement of use required by section 1(d) of this Act, the".

SEC. 114. OPPOSITION TO MARKS.

Section 13 (15 U.S.C. 1063) is amended—

(1) by inserting "(a)" before "Any person";

(2) by striking out "required fee" and inserting in lieu thereof "prescribed fee"; and

(3) by adding at the end thereof the following:

"(b) Unless registration is successfully opposed—

"(1) a mark entitled to registration on the principal register based on an application filed under section 1(a) or pursuant to section 44 shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued, and notice of the registration shall be published in the Official Gazette of the Patent and Trademark Office; or

"(2) a notice of allowance shall be issued to the applicant if the applicant applied for registration under section 1(b).".

SEC. 115. CANCELLATION OF REGISTRATIONS.

Section 14 (15 U.S.C. 1064) is amended—

(1) in the matter preceding subsection (a)—

(A) by inserting "as follows" after "be filed"; and

(B) by striking out "1905–" and inserting in lieu thereof "1905:";

(2) in subsection (a)—

(A) by striking out "(a) within" and inserting in lieu thereof "(1) Within"; and

(B) by striking out "; or" and inserting in lieu thereof a period;

(3) in subsection (b)—

(A) by striking out "(b) within" and inserting in lieu thereof "(2) Within"; and

(B) by striking out "; or" and inserting in lieu thereof a period;

(4) by amending subsection (c) to read as follows:

"(3) At any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 4 or of subsection (a), (b), or (c) of section 2 for a registration under this Act, or contrary to similar prohibitory provisions of such prior Acts for a registration under such Acts, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.";

(5) in subsection (d)—

(A) by striking out "(d) at" and inserting in lieu thereof "(4) At"; and

(B) by striking out "; or" and inserting in lieu thereof a period;

(6) in subsection (e)—

(A) by striking out "(e) at" and inserting in lieu thereof "(5) At"; and

(B) by striking out "(1)", "(2)", "(3)", and "(4)" and inserting in lieu thereof "(A)", "(B)", "(C)", and "(D)", respectively; and

(7) in the proviso at the end of the section by striking out "subsections (c) and (e)" and inserting in lieu thereof "paragraphs (3) and (5)".

SEC. 116. INCONTESTABILITY OF RIGHT TO USE MARK.

Section 15 (15 U.S.C. 1065) is amended—

(1) by striking out "subsections (c) and (e)" and inserting in lieu thereof "paragraphs (3) and (5)";

(2) in paragraph (3) by striking out "subsections (1) and (2) hereof" and inserting in lieu thereof "paragraphs (1) and (2) of this section"; and

(3) in paragraph (4) by striking out "the common descriptive name of any article or substance, patented or otherwise" and inserting in lieu thereof "the generic name for the goods or services or a portion thereof, for which it is registered".

SEC. 117. INTERFERENCE.

Section 16 (15 U.S.C. 1066) is amended by striking out "applied to the goods or when used in connection with the services" and inserting in lieu thereof "used on or in connection with the goods or services".

SEC. 118. ACTION OF COMMISSIONER IN PROCEEDINGS.

Section 18 (15 U.S.C. 1068) is amended—

(1) by striking out "or restrict" and inserting in lieu thereof "the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register";

(2) by striking out "or may refuse" and inserting in lieu thereof "may refuse"; and

(3) adding at the end thereof the following: "However, no final judgment shall be entered in favor of an applicant under section 1(b) before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c).".

SEC. 119. APPLICATION OF EQUITABLE PRINCIPLES.

Section 19 (15 U.S.C. 1069) is amended by striking out the second sentence.

SEC. 120. APPEALS.

Section 21 (15 U.S.C. 1071) is amended—

(1) in subsection (a)(1)—

(A) by striking out "section 21(b) hereof" each place it appears and inserting in lieu thereof "subsection (b) of this section";

(B) by striking out "section 21(a)(2) hereof" and inserting in lieu thereof "paragraph (2) of this subsection"; and

(C) by striking out "said section 21(b)" and inserting in lieu thereof "subsection (b) of this section";

(2) in subsection (a)(4), by adding at the end thereof the following: "However, no final judgment shall be entered in favor of an applicant under section 1(b) before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c).";

(3) in subsection (b)(1)—

(A) by striking out "section 21(a) hereof" and inserting in lieu thereof "subsection (a) of this section";

(B) by striking out "section 21(a)" and inserting in lieu thereof "subsection (a) of this section"; and

(C) by adding at the end thereof the following: "However, no final judgment shall be entered in favor of an applicant under section 1(b) before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c)."; and

(4) in subsection (b)(3), by striking out "(3)" and all that follows through the end of the first sentence and inserting in lieu thereof the following:

"(3) In any case where there is no adverse party, a copy of the complaint shall be served on the Commissioner, and, unless the court finds the expenses to be unreasonable, all the expenses of the proceeding shall be paid by the party bringing the case, whether the final decision is in favor of such party or not.".

SEC. 121. SUPPLEMENTAL REGISTER.

Section 23 (15 U.S.C. 1091) is amended—

(1) by inserting "(a)" before "In addition" in the first paragraph;

(2) by inserting "(b)" before "Upon the" in the second paragraph;

(3) by inserting "(c)" before "For the purposes" in the third paragraph;

(4) in subsection (a), as designated by paragraph (1) of this section—

(A) by striking out "paragraphs (a)," and inserting in lieu thereof "subsections (a),";

(B) by striking out "have been in lawful use in commerce by the proprietor thereof, upon" and inserting in lieu thereof "are in lawful use in commerce by the owner thereof, on";

(C) by striking out "for the year preceding the filing of the application"; and

(D) by inserting before "section 1" the following: "subsections (a) and (e) of";

(5) in subsection (b), as designated by paragraph (2) of this section, by striking out "fee herein provided" and inserting in lieu thereof "prescribed fee"; and

(6) by striking out the last paragraph.

SEC. 122. CANCELLATION ON SUPPLEMENTAL REGISTER.

Section 24 (15 U.S.C. 1092) is amended—

(1) by striking out "verified" in the second sentence;

(2) by striking out "was not entitled to register the mark at the time of his application for registration thereof," and inserting in lieu thereof "is not entitled to registration,";

(3) by striking out "is not used by the registrant or"; and

(4) by adding at the end thereof the following: "However, no final judgment shall be entered in favor of an applicant under section 1(b) before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c).".

SEC. 123. PROVISIONS OF ACT APPLICABLE TO SUPPLEMENTAL REGISTER.

Section 26 (15 U.S.C. 1094) is amended—

(1) by inserting "1(b)," after "sections"; and

(2) by inserting "7(c)," after "7(b)".

SEC. 124. REGISTRATION ON PRINCIPAL REGISTER NOT PRECLUDED.

Section 27 (15 U.S.C. 1095) is amended by adding at the end thereof the following: "Registration of a mark on the supplemental register shall not constitute an admission that the mark has not acquired distinctiveness.".

SEC. 125. NOTICE OF REGISTRATION.

Section 29 (15 U.S.C. 1111) is amended by striking out "as used".

SEC. 126. CLASSIFICATION OF GOODS AND SERVICES.

Section 30 (15 U.S.C. 1112) is amended—

(1) by inserting "or registrant's" after "applicant's";

(2) by striking out "may file an application" and inserting in lieu thereof "may apply";

(3) by striking out "goods and services upon or in connection with which he is actually using the mark:" and inserting in lieu thereof "goods or services on or in connection with which he or she is using or has a bona fide intention to use the mark in commerce:"; and

(4) by amending the proviso to read as follows: "*Provided*, That if the Commissioner by regulation permits the filing of an application for the registration of a mark for goods or services which fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Commissioner may issue a single certificate of registration for such mark.".

SEC. 127. INNOCENT INFRINGEMENT AND VIOLATIONS OF SECTION 43(a).

Section 32(2) (15 U.S.C. 1114(2)) is amended to read as follows:

"(2) Notwithstanding any other provision of this Act, the remedies given to the owner of a right infringed under this Act or to a person bringing an action under section 43(a) shall be limited as follows:

"(A) Where an infringer or violator is engaged solely in the business of printing the mark or violating matter for others and establishes that he or she was an innocent infringer or innocent violator, the owner of the right infringed or person bringing the action under section 43(a) shall be entitled as against such

(C) The following provisions of the 1986 Code are each amended by striking out "(F) or (J)" each place it appears and inserting in lieu thereof "(F), (J), or (M)":

(i) Section 3121(b)(19).

(ii) Section 3231(e)(1).

(iii) Section 3306(c)(19).

(D) Clause (i)(I) of section 7701(b)(5)(D) of the 1986 Code is amended by striking out "subparagraph (F)" and inserting in lieu thereof "subparagraph (F) or (M)".

(E) Section 210(a)(19) of the Social Security Act is amended by striking out "(F) or (J)" each place it appears and inserting in lieu thereof "(F), (J), or (M)".

(e) AMENDMENT RELATED TO SECTION 131 OF THE REFORM ACT.—Subsection (f) of section 86 of the 1986 Code is amended by inserting "and" at the end of paragraph (3), by striking out paragraph (4), and by redesignating paragraph (5) as paragraph (4).

(f) AMENDMENTS RELATED TO SECTION 132 OF THE REFORM ACT.—

(1) Section 67 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) COORDINATION WITH OTHER LIMITATION.—This section shall be applied before the application of the dollar limitation of the last sentence of section 162(a) (relating to trade or business expenses)."

(2) Paragraph (4) of section 67(b) of the 1986 Code is amended—

(A) by striking out "deduction" and inserting in lieu thereof "deductions", and

(B) by inserting before the comma at the end thereof "and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose)".

(3) Subsection (e) of section 67 of the 1986 Code is amended to read as follows:

"(e) DETERMINATION OF ADJUSTED GROSS INCOME IN CASE OF ESTATES AND TRUSTS.—For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

"(1) the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such trust or estate, and

"(2) the deductions allowable under sections 642(b), 651, and 661,

shall be treated as allowable in arriving at adjusted gross income. Under regulations, appropriate adjustments shall be made in the application of part I of subchapter J of this chapter to take into account the provisions of this section."

(4) Subsection (c) of section 67 of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following: "The preceding sentence shall not apply—

"(1) with respect to cooperatives and real estate investment trusts, and

"(2) except as provided in regulations, with respect to estates and trusts."

(g) AMENDMENTS RELATED TO SECTION 142 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 274(n)(2) of the 1986 Code is amended to read as follows:

"(A) such expense is described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),".

registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce. Such conclusive evidence shall relate to the exclusive right to use the mark on or in connection with the goods or services specified in the affidavit filed under the provisions of section 15, or in the renewal application filed under the provisions of section 9 if the goods or services specified in the renewal are fewer in number, subject to any conditions or limitations in the registration or in such affidavit or renewal application. Such conclusive evidence of the right to use the registered mark shall be subject to proof of infringement as defined in section 32, and shall be subject to the following defenses or defects:";

(2) in paragraph (3) by inserting "on or" after "goods or services";

(3) in paragraph (4)—

(A) by striking out "trade or service"; and

(B) by striking out "to users";

(4) in paragraph (5) by striking out "registration of the mark under this Act or" and inserting in lieu thereof "(A) the date of constructive use of the mark established pursuant to section 7(c), (B) the registration of the mark under this Act if the application for registration is filed before the effective date of the Trademark Law Revision Act of 1988, or (C)";

(5) in paragraph (7) by striking out the period and inserting in lieu thereof "; or"; and

(6) by adding at the end of the subsection the following:

"(8) That equitable principles, including laches, estoppel, and acquiescence, are applicable.".

(c) INJUNCTIONS.—Section 34(a) (15 U.S.C. 1116(a)) is amended in the first sentence by inserting "or to prevent a violation under section 43(a)" after "Office".

(d) NOTICE OF SUIT TO COMMISSIONER.—Section 34(c) (15 U.S.C. 1116(c)) is amended—

(1) by striking out "proceeding arising" and inserting in lieu thereof "proceeding involving a mark registered"; and

(2) by striking out "decision is rendered, appeal taken or a decree issued" and inserting in lieu thereof "judgment is entered or an appeal is taken".

(e) CIVIL ACTIONS ARISING FROM USE OF COUNTERFEIT MARKS.—Section 34(d)(1)(B) (15 U.S.C. 1116(d)(1)(B)) is amended by inserting "on or" after "designation used".

SEC. 129. RECOVERY FOR VIOLATION OF RIGHTS.

Section 35(a) (15 U.S.C. 1117(a)) is amended in the first sentence by inserting ", or a violation under section 43(a)," after "Office".

SEC. 130. DESTRUCTION OF INFRINGING ARTICLES.

Section 36 (15 U.S.C. 1118) is amended in the first sentence—

(1) by inserting ", or a violation under section 43(a)," after "Office"; and

(2) by inserting after "registered mark" the following: "or, in the case of a violation of section 43(a), the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation,".

SEC. 131. JURISDICTION.

(a) JURISDICTION OF COURTS.—Section 39 (15 U.S.C. 1121) is amended by inserting "(a)" after "SEC. 39.".

(b) CERTAIN ACTIONS BY STATES PRECLUDED.—Section 39a (15 U.S.C. 1121a) is amended—

(1) by striking out "SEC. 39a." and inserting in lieu thereof "(b)"; and

(2) by striking out "servicemarks" each place it appears and inserting in lieu thereof "service marks".

SEC. 132. UNREGISTERED MARKS, DESCRIPTIONS, AND REPRESENTATIONS.

Section 43(a) (15 U.S.C. 1125(a)) is amended to read as follows:

"(a) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

"(1) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

"(2) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.".

SEC. 133. INTERNATIONAL MATTERS.

Section 44 (15 U.S.C. 1126) is amended—

(1) in subsections (c), (d), (f), (g), and (h) by striking out "paragraph (b)" each place it appears and inserting in lieu thereof "subsection (b)";

(2) in subsection (a) by striking out "herein prescribed" and inserting in lieu thereof "required in this Act";

(3) in subsection (d) by striking out "sections 1, 2, 3, 4, or 23" and inserting in lieu thereof "section 1, 3, 4, 23, or 44(e)";

(4) in subsection (d)(2) by striking out "but use in commerce need not be alleged" and inserting in lieu thereof "including a statement that the applicant has a bona fide intention to use the mark in commerce";

(5) in subsection (d)(3) by striking out "foreing" and inserting in lieu thereof "foreign";

(6) in subsection (e) by adding at the end thereof the following: "The application must state the applicant's bona fide intention to use the mark in commerce, but use in commerce shall not be required prior to registration.";

(7) in subsection (f) by striking out "paragraphs (c), (d)," and inserting in lieu thereof "subsections (c), (d),"; and

(8) in subsection (i) by striking out "paragraph (b) hereof" and inserting in lieu thereof "subsection (b) of this section".

SEC. 134. CONSTRUCTION AND DEFINITIONS.

Section 45 (15 U.S.C. 1127) is amended—

(1) by amending the paragraph defining "related company" to read as follows:

"The term 'related company' means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used.";

(2) by amending the paragraph defining "trade name" and "commercial name" to read as follows:

"The terms 'trade name' and 'commercial name' mean any name used by a person to identify his or her business or vocation.";

(3) by amending the paragraph defining "trademark" to read as follows:

"The term 'trademark' includes any word, name, symbol, or device, or any combination thereof—

"(1) used by a person, or

"(2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this Act,

to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.";

(4) by amending the paragraph defining "service mark" to read as follows:

"The term 'service mark' means any word, name, symbol, or device, or any combination thereof—

"(1) used by a person, or

"(2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this Act,

to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.";

(5) by amending the paragraph defining "certification mark" to read as follows:

"The term 'certification mark' means any word, name, symbol, or device, or any combination thereof—

"(1) used by a person other than its owner, or

"(2) which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register established by this Act,

to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.";

(6) by amending the paragraph defining "collective mark" to read as follows:

"The term 'collective mark' means a trademark or service mark—

"(1) used by the members of a cooperative, an association, or other collective group or organization, or

"(2) which such cooperative, association, or other collective group or organization has a bona fide intention to use in commerce and applies to register on the principal register established by this Act, and includes marks indicating membership in a union, an association, or other organization.";

(7) by amending the paragraph defining "mark" to read as follows:

"The term 'mark' includes any trademark, service mark, collective mark, or certification mark.";

(8) by amending the matter which appears between the paragraph defining "mark", and the paragraph defining "colorable imitation" to read as follows:

"The term 'use in commerce' means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For purposes of this Act, a mark shall be deemed to be in use in commerce—

"(1) on goods when—

"(A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and

"(B) the goods are sold or transported in commerce, and

"(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.

"A mark shall be deemed to be 'abandoned' when either of the following occurs:

"(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie evidence of abandonment. 'Use' of a mark means the bona fide use of that mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

"(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.".

SEC. 135. PENDING APPLICATIONS.

The Trademark Act of 1946 is amended by adding at the end thereof the following:

"SEC. 51. All certificates of registration based upon applications for registration pending in the Patent and Trademark Office on the effective date of the Trademark Law Revision Act of 1988 shall remain in force for a period of 10 years.".

SEC. 136. EFFECTIVE DATE.

This title and the amendments made by this title shall become effective on the date which is one year after the date of enactment of this Act.

TITLE II—SATELLITE HOME VIEWER ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "Satellite Home Viewer Act of 1988".

SEC. 202. AMENDMENTS TO TITLE 17, UNITED STATES CODE.

Title 17, United States Code, is amended as follows:

(1) Section 111 of title 17, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (3) by striking "or" at the end;

(ii) by redesignating paragraph (4) as paragraph (5); and

(iii) by inserting the following after paragraph (3):

"(4) the secondary transmission is made by a satellite carrier for private home viewing pursuant to a statutory license under section 119; or"; and

(B) in subsection (d)(1)(A) by inserting before "Such statement" the following:

"In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing pursuant to section 119.".

(2) Chapter 1 of title 17, United States Code, is amended by adding at the end the following new section:

"§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

"(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

"(1) SUPERSTATIONS.—Subject to the provisions of paragraphs (3), (4), and (6) of this subsection, secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing.

"(2) NETWORK STATIONS.—

"(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection, secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission.

"(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households.

"(C) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after the effective date of the Satellite Home Viewer Act of 1988, or 90 days after commencing such secondary transmissions, whichever is later, submit to the network that owns or is affiliated with the network station a list identifying (by street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights, on or after the effective date of the Satellite Home Viewer Act of 1988, a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

"(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

"(4) WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

"(5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.—

"(A) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

"(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

"(ii) any statutory damages shall not exceed $5 for such subscriber for each month during which the violation occurred.

"(B) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

"(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out; and

"(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out.

"(C) PREVIOUS SUBSCRIBERS EXCLUDED.—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before the date of the enactment of the Satellite Home Viewer Act of 1988.

"(6) DISCRIMINATION BY A SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

"(7) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States.

"(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

"(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal, prescribe by regulation—

"(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal, from time to time prescribe by regulation; and

"(B) a royalty fee for that 6-month period, computed by—

"(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 12 cents;

"(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 3 cents; and

"(iii) adding together the totals computed under clauses (i) and (ii).

"(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Copyright Royalty Tribunal as provided by this title.

"(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Tribunal under paragraph (4).

"(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

"(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

"(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, the Tribunal shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Tribunal finds the existence of a controversy, the Tribunal shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

"(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

"(c) DETERMINATION OF ROYALTY FEES.—

"(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective until December 31, 1992, unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection. After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragraphs (3) and (4).

"(2) FEE SET BY VOLUNTARY NEGOTIATION.—

"(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before July 1, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

"(B) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

"(C) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in

(A) by striking out "Kansas, Florida, Georgia, or Texas" in subparagraph (A) and inserting in lieu thereof "the United States",

(B) by striking out "the purchase" in subparagraph (C) and inserting in lieu thereof "the purchaser", and

(C) by striking out the last sentence.

(13) Paragraph (14) of section 204(a) of the Reform Act is amended by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a comma, and by inserting after subparagraph (E) the following:

"(F) the project has a planned scheduled capacity of approximately 38,000 kilowatts, the project property is placed in service before January 1, 1991, and the project is operated, established, or constructed pursuant to certain agreements, the negotiation of which began before 1986, with public or municipal utilities conducting business in Massachusetts, or

"(G) the Board of Regents of Oklahoma State University took official action on July 25, 1986, with respect to the project.

In the case of the project described in subparagraph (F), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1991' for 'January 1, 1989'."

(14) Paragraph (15) of section 204(a) of the Reform Act is amended—

(A) by adding "located in New Mexico" after "to a project",

(B) by striking out "$72,000" and inserting in lieu thereof "$72,000,000", and

(C) by striking out the last sentence and inserting in lieu thereof the following:

"For purposes of this paragraph, section 203(b)(2) shall be applied by substituting 'January 1, 1996' for 'January 1, 1991' each place it appears."

(15) Paragraph (24) of section 204(a) of the Reform Act is amended by adding at the end thereof the following new subparagraphs:

"(E) The amendments made by section 201 shall not apply to the Muskegon, Michigan, Cross-Lake Ferry project having a projected cost of approximately $7,200,000.

"(F) The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $28,000,000, and which will be constructed for and placed in service by OSG Car Carriers, Inc., to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985, and definitive transportation contracts were awarded before June 1986."

(16) Paragraph (25) of section 204(a) of the Reform Act is amended by striking out "wood energy products" and inserting in lieu thereof "wood energy projects".

(17) Paragraph (27) of section 204(a) of the Reform Act is amended—

(A) in subparagraph (B), by striking out "525,000" and inserting in lieu thereof "540,000",

(B) in subparagraph (C)—

public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing. The fee shall also be calculated to achieve the following objectives:

"(i) To maximize the availability of creative works to the public.

"(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

"(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

"(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

"(E) Report to copyright royalty tribunal.—Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D).

"(F) Action by copyright royalty tribunal.—Within 60 days after receiving the report of the Arbitration Panel under subparagraph (E), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in subparagraph (D). If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph. The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence). The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate. The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying.

"(G) Period during which decision of panel or order of tribunal effective.—The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become effective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F), and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994.

"(H) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee adopted or ordered under subparagraph (F) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2).

"(4) JUDICIAL REVIEW.—Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. The pendency of an appeal under this paragraph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royalty fees specified in that subsection. The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in paragraph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner. If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3).

"(d) DEFINITIONS.—As used in this section—

"(1) DISTRIBUTOR.—The term 'distributor' means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities.

"(2) NETWORK STATION.—The term 'network station' has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station.

"(3) PRIMARY NETWORK STATION.—The term 'primary network station' means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

"(4) PRIMARY TRANSMISSION.—The term 'primary transmission' has the meaning given that term in section 111(f) of this title.

"(5) PRIVATE HOME VIEWING.—The term 'private home viewing' means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

"(6) SATELLITE CARRIER.—The term 'satellite carrier' means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

"(7) SECONDARY TRANSMISSION.—The term 'secondary transmission' has the meaning given that term in section 111(f) of this title.

"(8) SUBSCRIBER.—The term 'subscriber' means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

"(9) SUPERSTATION.—The term 'superstation' means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.

"(10) UNSERVED HOUSEHOLD.—The term 'unserved household', with respect to a particular television network, means a household that—

"(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

"(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

"(e) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner.".

(3) Section 501 of title 17, United States Code, is amended by adding at the end the following:

"(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.".

(4) Section 801(b)(3) of title 17, United States Code, is amended by striking "and 116" and inserting ", 116, and 119(b)".

(5) Section 804(d) of title 17, United States Code, is amended by striking "sections 111 or 116" and inserting "section 111, 116, or 119".

(6) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by adding at the end the following new item:

"119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing.".

SEC. 203. SYNDICATED EXCLUSIVITY; REPORT ON DISCRIMINATION.

Title VII of The Communications Act of 1934 (47 U.S.C. 601 et seq.) is amended by adding at the end the following:

"SYNDICATED EXCLUSIVITY

"SEC. 712. (a) The Federal Communications Commission shall, within 120 days after the effective date of the Satellite Home Viewer Act of 1988, initiate a combined inquiry and rulemaking proceeding for the purpose of—

"(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming (as defined by the Commission) for private home viewing of secondary transmissions by satellite of broadcast station signals similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television; and

"(2) adopting such rules if the Commission considers the imposition of such rules to be feasible.

"(b) In the event that the Commission adopts such rules, any willful and repeated secondary transmission made by a satellite carrier to the public of a primary transmission embodying the performance or display of a work which violates such Commission rules shall be subject to the remedies, sanctions, and penalties provided by title V and section 705 of this Act.

"DISCRIMINATION

"SEC. 713. The Federal Communications Commission shall, within 1 year after the effective date of the Satellite Home Viewer Act of 1988, prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on whether, and the extent to which, there exists discrimination described in section 119(a)(6) of title 17, United States Code.".

SEC. 204. INQUIRY ON ENCRYPTION STANDARD.

Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended by adding at the end thereof the following:

"(f) Within 6 months after the date of enactment of the Satellite Home Viewer Act of 1988, the Federal Communications Commission shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing. In conducting such inquiry, the Commission shall take into account—

"(1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation;

"(2) incorporation of technological enhancements, including advanced television formats;

"(3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming;

"(4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems;

"(5) the effect of any such standard on competition in the manufacture of decryption equipment; and

"(6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards.

"(g) If the Commission finds, based on the information gathered from the inquiry required by subsection (f), that a universal encryption standard is necessary and in the public interest, the Commission shall initiate a rulemaking to establish such a standard.".

SEC. 205. PIRACY OF SATELLITE CABLE PROGRAMMING.

Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) in subsection (c)—

(A) by striking "and" at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting "; and"; and

(C) by adding at the end the following:

"(6) the term 'any person aggrieved' shall include any person with proprietary rights in the intercepted communication by wire or radio, including wholesale or retail distributors of satellite cable programming, and, in the case of a violation of paragraph (4) of subsection (d), shall also include any person engaged in the lawful manufacture, distribution, or sale of equipment necessary to authorize or receive satellite cable programming.";

(2) in subsection (d)(1), by striking "$1,000" and inserting "$2,000";

(3) in paragraph (2) of subsection (d), by striking "$25,000" and all that follows through the end of that paragraph and inserting "$50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than $100,000 or imprisoned for not more than 5 years, or both, for any subsequent conviction.";

(4) in subsection (d)(3)(A), by inserting "or paragraph (4) of subsection (d)" immediately after "subsection (a)";

(5) in subsection (d)(3)(B) by striking "may" the first time it appears;

(6) in subsection (d)(3)(B)(i), by inserting "may" immediately before "grant";

(7) in subsection (d)(3)(B)(ii), by inserting "may" immediately before "award";

(8) in subsection (d)(3)(B)(iii), by inserting "shall" immediately before "direct";

(9) in subsection (d)(3)(C)(i)(II)—

(A) by inserting "of subsection (a)" immediately after "violation";

(B) by striking "$250" and inserting "$1,000"; and

(C) by inserting immediately before the period the following: ", and for each violation of paragraph (4) of this subsection involved in the action an aggrieved party may recover statutory damages in a sum not less than $10,000, or more than $100,000, as the court considers just";

(10) in subsection (d)(3)(C)(ii), by striking "$50,000" and inserting "$100,000 for each violation of subsection (a)";

(11) in subsection (d)(3)(C)(iii), by striking "$100" and inserting "$250"; and

(12) by striking paragraph (4) of subsection (d) and inserting the following:

"(4) Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or is intended for any other activity prohibited by subsection (a), shall be fined not more than $500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both. For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.".

SEC. 206. EFFECTIVE DATE.

This title and the amendments made by this title take effect on January 1, 1989, except that the authority of the Register of Copyrights to issue regulations pursuant to section 119(b)(1) of title 17, United States Code, as added by section 202 of this Act, takes effect on the date of the enactment of this Act.

SEC. 207. TERMINATION.

This title and the amendments made by this title (other than the amendments made by section 205) cease to be effective on December 31, 1994.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

APPENDIX II.—FURTHER MATERIALS BY WITNESSES

A HISTORY OF GENERAL INSTRUMENT CORPORATION

Founded in 1923, General Instrument Corporation started as a components manufacturer for the emerging radio electronics industry. In the years prior to World War II, as radio components became more sophisticated, product lines were broadened and General Instrument became a major producer of electronic components for the radio, phonograph and television markets.

Defense Efforts Spawn New Businesses

During World War II much of the Company's production capacity was used to manufacture components for the government. In 1946, in a rapidly expanding post-war economy, General Instrument took a major growth step with the acquisition of the F.W. Sickles Company, a leading manufacturer of radio components.

A dominant position in the entertainment electronics business was achieved in 1955 with the acquisition of Automatic Manufacturing Company, a producer of condensers, transformers and tuners. As a consequence, the Company became a major independent supplier of UHF tuners to the domestic television industry, as well as a major supplier of automobile radio tuners and tuning coils. Although no longer in these businesses, General Instrument, through its Computer Products division used these technologies to specialize in computer-related products, such as coils and transformers for computer monitors, switching power supplies, keyboards and digital displays.

Semiconductor Leadership

During the late fifties and early sixties, General Instrument embarked on a plan of strong internal growth. Management concentrated on the development of components which were to revolutionize electronics-solid state devices. In 1957, the Company acquired the Radio Receptor Company, a supplier of defense communications systems and a developer of selenium diodes and rectifiers. The defense-related portion was later merged with an acquisition from the Harris Transducer Corporation in 1961. Today it is the Government Systems Division which specializes in high technology electronic defense systems for the United States and other governments. Advanced concepts are used in designing high power microwave and digital/analog circuitry and software. Major products include sophisticated signal detection systems for radar warning and electronic surveillance and targeting, anti-radiation decoy systems, multi-beam ocean-bottom mapping systems, sonar communications and automated electronic support systems.

In 1960, Radio Receptor's diode and rectifier segment was merged with the acquired operations of another company, the General Transistor Corporation. With this merger we became one of the largest domestic producers of discrete semiconductor devices, including transistors, diodes and rectifiers. Although integrated circuits largely have replaced transistors and diodes, rectifiers are still a major element of circuit design. Our Power Semiconductor division has worldwide market share leadership in low-to-medium power rectifiers and rectifier bridge assemblies. General Instrument is a market leader in surface mounted rectifier designs.

During the early sixties research and development efforts concentrated on the development of solid state devices with special emphasis on the manufacture of metal-oxide-semiconductor (MOS) integrated circuits. This activity included the first research and development laboratory exclusively dedicated to MOS technology. Thus began General Instrument's microelectronics business, which became a leader in the manufacture of large-scale and very-large-scale integration circuits. When video games were popular, General Instrument was the leading supplier of VLSI circuits to this market. Today, it is a specialist in non-volatile memory products utilizing state-of-the-art CMOS small geometry designs. These designs are directed toward fast, high density EPROM and EEPROM products.

Pioneering Off-shore Manufacturing

In 1964, General Instrument recognized the need to lower manufacturing costs. At the same time, the Republic of China needed foreign investment for industrialization, new technology and employment. The result was the first modern electronics manufacturing plant in Taiwan, and the birth of a national industry. Hundreds of electronics firms from the U.S., Japan and other nations have followed General Instrument's lead and built plants in Taiwan. General Instrument of Taiwan has one of the largest facilities in the country. The Company also has off-shore manufacturing facilities in Mexico, Malaysia, Europe and the U.K.

Entry into Electro-Optical Field

In 1966, we broadened our product lines with the acquisition of Signalite, Inc., a manufacturer of neon glow lamps. This marked the company's entry into the electro-optical field followed by the acquisition of Chicago Miniature Lamp Works in 1969. During the same period, we expanded our involvement in subminiature incandescent and neon lamps with the acquisition of three English firms: Hivac Ltd., Vitality Bulbs Ltd. and NORE electric Ltd.

In 1979, General Instrument acquired Monsanto's optoelectronics business.

Telecommunications Components

A major acquisition in 1967 was Universal Controls, Inc. One of Universal's subsidiaries was C.P. Clare and Company, a major manufacturer of relays and other electromechanical switching devices. Now a division, Clare is a leader in signal power switching technology, manufacturing mercury-wetted and dry reed miniature relays for sophisticated switching applications, such as voice and data telecommunications.

Wagering Systems Pioneer

A second subsidiary of Universal Controls, the American Totalisator Company, Inc. (AmTote), pioneered use of electromechanical totalisator systems for parimutuel wagering at racetracks. In 1967 it was the first company to introduce computerized systems to wagering. Today AmTote is the leading supplier of on-track wagering systems, with installations in more than 200 racetracks worldwide, including all 14 majortracks in California.

AmTote also pioneered off-track betting systems and currently operates the New York City off-track betting system and the state-wide off-track betting system in Connecticut.

Another AmTote innovation is Teletrack®, the world's first theatre of racing, located in New Haven, Connecticut. Racing events, transmitted live by microwave link from New York area thoroughbred and trotting tracks, are displayed on a giant 24' x 32' screen. The Teletrack facility seats 2200 people, has a clubhouse, lounge and restaurant and the very latest in wagering systems.

In 1975, AmTote was the first company to successfully implement computerized transaction processing technology for on-line state-run lottery systems. Since then, AmTote has provided systems for nine state-run lotteries, including Missouri and Connecticut and for the national lottery of Israel. AmTote recently introduced Galaxy®, a lottery system with the fastest transaction processing time and highest capacity of any system available today.

Computerized Payment Processing

AmTote applied its transaction processing technology to point-of-sale registers that were designed to meet the increasingly sophisticated needs of large retail chains. Emanating from this technology was the development of a computerized benefits delivery system for the New York City Department of Social Services. Social Services clients may obtain public assistance and food stamps at designated locations through the use of computer identification cards. This system reduces the cost of benefits administration by eliminating benefit check printing and mailing costs and by eliminating loss of benefit checks through mailbox theft.

Leadership in the CATV Business

A major event for the Company in 1967 was the acquisition of Jerrold Corporation, the pioneer of cable television technology. Jerrold now has grown into the world's largest supplier of cable TV equipment. Products range from addressable head-end signal processing equipment, distribution amplifiers, addressable subscriber terminals, impulse pay-per-view systems and stereo TV sound decoders to satellite signal reception equipment. Jerrold's STARCOM VI family of CATV converters is the most complete line of subscriber products available in the industry.

In 1983, General Instrument added to the CATV product base by acquiring Tocom, Inc., a leader in low-cost baseband addressable converters. Tocom manufactures the 5503-VIP converter which has the most features and lowest cost of any baseband subscriber product on the market.

Another major event in 1983 was the company's development of technologies that made possible the first consumer direct braodcast satellite television service.

Venture Investments

The growth experienced during the 1970's helped General Instrument pursue a strategy of growth by venture investment in emerging technologies during the early 1980's. One of the most important venture investments in Sytek, Inc., a leader in the market for open-access large scale broadband local area networks.

In addition, the Company has had interests in a variety of technology companies, including those engaged in speech synthesis and recognition, private satellite video and data networks, hand-held computer terminals, real-time interactive graphics systems and others. Some of these technologies have provided the basis for several new products for the Company.

Restructuring

During the mid-1980's difficult market conditions dictated that General Instrument undergo a restructuring of operations. The aim of the restructuring was to transform the Company into a more sharply focused business entity. As a result, certain operations were divested and/or discontinued and others were acquired and/or consolidated. A major component of the restructuring program was the acquisition of the Cable/Home Communication business of M/A-COM, Inc. This included: Comm/Scope division - the leading manufacturer of coaxial cable for the cable TV and business LAN markets - and VideoCipher division - producer of the market-standard VideoCipher®II encryption/decryption system for the TVRO market.

General Instrument Today

Over the years, market conditions have changed and so has General Instrument. Today the Company is composed of three major product groups. They are:

Broadband Communications - Comm/Scope division, Jerrold Distribution Systems division, Jerrold Subscriber Systems division, Tocom division and VideoCipher division;

Data Systems - AmTote division, Lottery division, Government Systems division and Worldwide Wagering;

Component Products - Clare division, Computer Products division, Lamp division and Power Semiconductor division.

#####

8/87

GENERAL
INSTRUMENT

VIDEOCIPHER DIVISION

The VideoCipher Division of General Instrument Corp. is the world's largest supplier of encryption systems for satellite television distribution.

They design and manufacture satellite television encryption systems for cable television (CATV) programmers, commercial descramblers for CATV headends, and consumer descramblers for home TVRO. They are also a major supplier of complete home TVRO systems, including satellite dishes and receivers, cable, antennas and related accessories.

Their San Diego headquarters houses the only DBS subscriber program authorization center in the United States which is used by programmers for selectively authorizing home TVRO owners to receive encrypted satellite programming via the VIDEOCIPHER® II consumer descrambler.

The VIDEOCIPHER technology received the 1986 Emmy Award from the National Academy of Television Arts & Sciences for outstanding achievement in the science of television engineering.

General Instrument is the industry leader in cable television electronics, coaxial cable and satellite television encryption systems, and specializes in communications systems.

May 1987

BACKGROUND INFORMATION ON THE VIDEOCIPHER® II SATELLITE TELEVISION SCRAMBLING SYSTEM

VIDEOCIPHER® II technology is currently designed and manufactured by the VideoCipher Division of General Instrument Corp.

VIDEOCIPHER® II scrambling technology was originally developed by M/A-COM's Video Products Group to secure the signals of satellite-delivered programming services. The technology was designed to be an extremely high security, high signal quality scrambling system for satellite television distribution.

M/A-COM's Video Products Group in San Diego, California, began the development of VIDEOCIPHER® systems in 1981. In early 1983, M/A-COM was awarded a contract by Home Box Office to provide VIDEOCIPHER® II equipment for the scrambling of programming signals being sent by HBO to its cable television affiliates. In 1984, Showtime/The Movie Channel also selected the VIDEOCIPHER® II scrambling system to protect its satellite transmitted programming for CATV affiliates. Since then, more than twenty other major program providers have announced their plans to use this same encryption system.

In September 1986, the Video Products Group was sold to General Instrument Corportation.

The VIDEOCIPHER® II system is comprised not only of hardware (scramblers, descramblers and control computers), but also extensive software for addressing and control of descramblers for authorization and billing purposes. Additionally, the VIDEOCIPHER® scrambling system employs the Data Encryption Standard (DES) algorithm of the National Bureau of Standards, an all digital system.

This system works in the following fashion:

A computer in the satellite uplink site takes a standard video signal and processes it with addressing and control data to produce a scrambled signal. The signal is then transmitted over C-band or Ku-band satellite. At the downlink receiving location, an authorized descrambler reverses the steps performed at the scrambling site to produce a clear video signal. Only descramblers that have been individually authorized over the satellite for particular channels will be able to successfully process these signals.

In order to provide extremely high quality and security, VIDEOCIPHER® II transmits two audio channels--along with addressing and control information--as digital data. This digital data is encrypted (using the DES algorithm) for the highest possible security. The scrambled video is completely unintelligible. The encrypted audio appears as totally random data and can be decrypted only by a descrambler that is properly authorized over the satellite channel.

The security of DES is based on a 56-bit "key" which is analogous to a password. Without knowing the key, a DES encrypted message cannot be decrypted unless all 72 quadrillion possible keys are tested by trial and error. Each descrambler has a unique secret DES key contained in a secure microprocessor. To descramble a particular transmission, the descrambler must have the DES key used to scramble that program at the uplink. The program key is transmitted over the control channel to each authorized descrambler, after first encrypting it in that descrambler's unique unit key. Only the intended descrambler will be able to decrypt the program key and obtain the program.

General Instrument develops and manufactures two VIDEOCIPHER® II descramblers: the commercial descrambler, VIDEOCIPHER®IIC, for use at broadcast and cable system headends, and the consumer descrambler, VIDEOCIPHER® II Series 2000E, for use by home TVRO owners.

The consumer descrambler connects to an existing satellite receiver, via a VCR-type connection, and provides for the authorized reception of scrambled program services. A single descrambler can receive all VIDEOCIPHER® II-scrambled channels to which the home owner has subscribed. The Series 2000E descrambler has been successfully tested with over one hundred satellite receivers for proper operation.

The VIDEOCIPHER® II Series 2500R satellite receiver represents the next generation of consumer satellite receivers. The unit incorporates VIDEOCIPHER® II descrambling capability into a high quality, multi-feature receiver.

Both the Series 2000E and the Series 2500R make use of a common descrambling "module" which is available under license to other satellite equipment manufacturers to incorporate into receivers of their own design. In addition to their descrambling capability, all VIDEOCIPHER® II consumer descramblers and integrated receiver/descramblers have ancillary consumer features such as digital stereo audio, reception of text and message services, improved picture clarity and parental control of rated programming.

In September 1986, the National Academy of Television Arts and Sciences presented the Video Products Group with an Emmy award for Outstanding Achievement in the Science of Television Engineering.

Media are requested to contact the Marketing Department at (619) 535-2436. The VideoCipher Division consumer hotline number is (800) 344-6754.

May 1987

DBS AUTHORIZATION CENTER
SAN DIEGO, CALIFORNIA

General Instrument Corporation operates the direct broadcast by satellite (DBS) Authorization Center which provides satellite television programmers, using General Instrument's VideoCipher ® II scrambling technology, with a program delivery service that is controlled by authorizing and deauthorizing consumer descramblers based upon information generated by the programmer to the Center.

The major advantage of a common authorization center is that it allows programs from a number of suppliers to be received by the same consumer descrambler, and eliminates the need for a separate descrambler for each service.

General Instrument operates the DBS Authorization Center on a cost reimbursement basis, with costs allocated equitably among the program distributors using its services. Located at General Instrument's VideoCipher Division facility in San Diego, California, the Center reports to Mr. Kenneth Kinsman, vice president.

HOW IT WORKS

A master computer at the Authorization Center translates authorization data received from clients' DBS business system computers into a composite authorization/deauathorization message stream. There are no restrictions on the business systems other than that they provide authorization data in the accepted format (X.25) and at an acceptable rate (4.8 or 9.6 kpbs).

-more-

The business systems can interface to the Center by leased lines. Data enters the Center through an X.25 packet switch. The switch routes data to a computer containing the Network Management System (NMS). This software system sorts out the overlapping authorization data coming from the business systems and maintains the authorization status for each DBS subscriber. Each time the NMS detects a change in status for a subscriber, it sends an authorization update to the DBS Control System. These messages are then distributed by the Center to the Programmers' uplinks.

At the programmer's facility, the control messages are combined with the television programs before they are uplinked to the satellite. Since the different program channels all carry the same DBS authorization information, an authorized descrambler will receive its status messages no matter which scrambled channel is being watched. Consequently, subscribers can switch between independently operated program services without loss of descrambler authorization.

In addition to controlling descrambler authorizations, the Center generates transaction summary and descrambler status reports reflecting each user's DBS activity. Subscriber data is partitioned in the Center's computer so that information about subscribers of one service cannot be accessed by another.

***

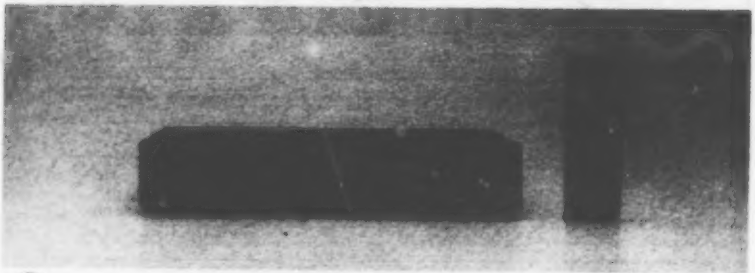
Since its opening in early 1986, the DBS Authorization Center has authorized over 160,000 consumer descramblers.

###

5/87

GENERAL
INSTRUMENT

VIDEOCIPHER® II
2500R SATELLITE RECEIVER



FEATURES

- Integrated Receiver and Descrambler
- Enhanced Threshold Performance
- Automatic Descrambling of Authorized Signals
- Parental Supervision—Two Methods
- Built In TI Filter
- Wireless Remote Control
- C-Band and Ku-Band Ready
- Stereo Sound—Digital Audio
- Complete Optional Antenna Controller
- Spectra-Sat Recall

VideoCipher® II is a registered trademark of General Instrument Corporation.

General Instrument has combined the winning performance of its satellite receivers with the advanced technology of the VideoCipher® II descrambler. The VideoCipher® II 2500R satellite receiver uses advanced circuitry to increase picture quality and reduce sparklies. The 2500R is also available with an antenna positioner power supply that can store up to 21 satellite locations and program into memory 10 of your favorite channels on any satellite. The wireless remote control operates receiver, antenna positioner and VideoCipher® features and is standard with all 2500R units.

© [illegible] Cable/Home Communications Corporation

GENERAL INSTRUMENT VIDEOCIPHER® II 2500R SATELLITE RECEIVER

FEATURES

Integrated Receiver and Descrambler — Only 1 Box	The VideoCipher® II 2500R satellite receiver combines an advanced General Instrument satellite receiver with the latest in VideoCipher® descrambler technology. The 2500R positions the antenna, tunes in every channel available and descrambles all authorized subscription channels. (Small optional power supply required for antenna positioning control.)
Enhanced Threshold Performance	The 2500R delivers maximum picture quality with advanced circuitry, providing up to 2 dB threshold improvement over most satellite receivers. By using the latest in threshold extension designs, General Instrument's 2500R reduces sparklies and provides crisper images.
Automatic Descrambling of Authorized Signals	After receiving authorization for scrambled programming from the program supplier of your choice, you are ready to enjoy satellite television. With one component—the 2500R—you'll be able to subscribe to all of the channels that are scrambled with the VideoCipher® II scrambling system and offered to the home TVRO market.
Parental Supervision— Two Methods	The 2500R lets you supervise the programs your children watch by blocking out selected channels and setting a password-controlled, program rating limit on VideoCipher® scrambled channels.
Built In TI Filter	The 2500R features a built-in Terrestrial Interference (TI) filter, optimized for use with a VideoCipher® descrambler. The filter rejects local TI and is easily operated by the remote control or front panel keys. The 2500R also features a 70 MHz IF loop-thru for extremely difficult TI site problems.
Wireless Remote Control	All antenna positioning and VideoCipher® descrambler features are accessible with the 2500R wireless infrared remote control unit. Channel selection, volume level, audio subcarrier tuning, and system fine-tune adjustments can be controlled with the single remote unit.
C-Band and Ku-Band Ready	The 2500R is programmed for 24 C-Band and 32 Ku-Band channels with digital tuning for drift-free operation.
Stereo Sound— Digital Audio	With the 2500R, you may enjoy digital stereo sound on VideoCipher® channels, when offered by the programmer. Play the audio through your stereo-equipped TV or home stereo system for maximum enjoyment. Monaural, discrete and matrix stereo subcarrier audio are also available. Two different audio bandwidth filters are included to maximize audio quality.
Complete Antenna Controller	With the optional antenna positioner power supply, you'll be able to program up to 21 satellites into the 2500R's memory. Once stored in memory, the antenna controller will direct your antenna system with pin-point accuracy to each satellite location.
Spectra-Set Recall	The optional antenna positioner power supply allows you to program 10 of your favorite channels on any satellite. With a single key on the remote control, you'll be able to recall the satellite, channel and all fine-tuning adjustments including video AFC, audio format, and subcarrier frequency, slew, polarity, TI filter and satellite choice.

SPECIFICATIONS

Tuning	Digitally synthesized
Input Frequency	950-1450 MHz
Input Sensitivity	– 65 dBm to – 20 dBm
Channel	24 C-Band/32 Ku-Band
IF Bandwidth	27 MHz
70 MHz Loop Thru	70 MHz ± 15 MHz
Video Output (VCR/Monitor)	1 volt p-p baseband video, (filtered, clamped, AC coupled)
(Note: All video connections require 75 ohms impedance connectors)	
Audio Output	2.1 volt max. baseband audio stereo left and right
Audio Tunable Subcarriers	5.0-8.5 MHz/20 kHz step
Audio Bandwidth	150 kHz or 330 kHz
Audio Format	Mono, Matrix and Discrete Stereo 6.8 MHz
Audio Response	30 Hz to 15 kHz ± 1dB
Audio Dynamic Range (VideoCipher)	75 dB min
Subcarrier Output	Composite video (unfiltered unclamped)

TV RF Output	Local VHF in, or channel 3/4 remodulated (switchable)
IPPV Output	For future use, (serial data)
Data Output	For future use, (serial data)
Drive to Rotor Polarizer	+ 5 VDC ± .5V 500 mA max.
Pulse to Rotor Polarizer	0 to 5V ± .5V, 800 to 2200 microsec
External H/V Switch Control	± 8VDC, 20 mA min
Positioner Pulse	0 to 5V TTL Level, Reed or Hall Effect
External Power Supply Housing (Connection with Receiver via one cable.)	
Isolated Motor Drive	(M1) + 36 VDC (M2) – 36 VDC
Circuit Breaker	120 VAC 2.0 Amp
Convenience Outlet	Unfused, unswitched 117 VAC
Size (Receiver)	17.12" x 2.95" x 11.98"
Size (Ext. Power Supply)	5.43" x 2.95" x 12.52"
Approvals and Certification	UL, CSA, FCC

GENERAL INSTRUMENT P.O. Box 1729, Hickory, NC 28603—Phone: (800) 438-3331

PN 5002-069 REV. A

GENERAL INSTRUMENT

VIDEOCIPHER®

SECURE TELEVISION SCRAMBLING SYSTEMS

NOVEMBER 15, 1987

8300-1

GENERAL INSTRUMENT

VIDEOCIPHER PRODUCTS

- VIDEOCIPHER I (PRODUCTION: JANUARY 1984)
  - VIDEO ENCRYPTION BY LINE SEGMENT DISPLACEMENT
  - DIGITAL STEREO AUDIO ENCRYPTION
  - FOR SECURE SATELLITE DISTRIBUTION TO BROADCASTERS AND CABLE HEADENDS
- VIDEOCIPHER II (PRODUCTION: NOVEMBER 1984)
  - VIDEO SCRAMBLING BY SYNC ELIMINATION AND VIDEO INVERSION
  - DIGITAL STEREO AUDIO ENCRYPTION
  - COMPATIBLE CABLE HEADEND AND DBS VERSIONS
  - LOW COST THROUGH CUSTOM LSI

5200-2

GENERAL INSTRUMENT

VIDEOCIPHER PRODUCT STATUS (11/15/87)

- VIDEOCIPHER I
  - ORDERED BY CBS TO SECURE ITS SATELLITE FEEDS TO BROADCAST AFFILIATES; ROLLOUT OF 450 DESCRAMBLERS COMPLETE
- VIDEOCIPHER II
  - SELECTED BY OVER 40 CABLE PROGRAMMERS TO SECURE THEIR SATELLITE FEEDS TO CABLE AND SMATV AFFILIATES, AND TO DBS SUBSCRIBERS.
  - 92 UPLINK SCRAMBLERS SUCCESSFULLY INSTALLED; 44 SERVICES FULLY SCRAMBLED.
  - ROLLOUTS IN PROCESS FOR DISNEY, MTV, VH1, NICKELODEON, LIFETIME, AMERICAN MOVIE CLASSICS.
  - OVER 170,000 COMMERCIAL DESCRAMBLERS PRODUCED AND SHIPPED TO CABLE AND SMATV AFFILIATES.
  - DBS AUTHORIZATION CENTER OPERATIONAL WITH 12 PROGRAMMER BILLING SYSTEMS.
  - OVER 268,000 CONSUMER DESCRAMBLERS AUTHORIZED FOR SERVICE.

5200-3

GENERAL
INSTRUMENT

VIDEOCIPHER II

- PROVIDES HIGH SECURITY FOR SATELLITE TRANSMISSION OF TELEVISIONS SIGNALS

- DESIGNED TO SECURE SIMULTANEOUS TRANSMISSION:
  - TO COMMERCIAL AFFILIATE HEADENDS AND
  - DIRECT TO TVRO SUBSCRIBERS' HOMES
    (DBS – C BAND AND/OR Ku BAND)

GENERAL INSTRUMENT

VIDEOCIPHER II ADVANTAGES

- BETTER RECEPTION THAN CLEAR TRANSMISSION
  - CLEARER, MORE STABLE VIDEO
  - COMPACT DISK QUALITY STEREO AUDIO

- ADDITIONAL CONSUMER FEATURES
  - TEXT SERVICE FOR PROGRAM GUIDES, HEADLINES, ETC.
  - PERSONAL MESSAGES FOR ELECTRONIC MAIL
  - PARENTAL CONTROL (PROGRAM BY PROGRAM)

GENERAL INSTRUMENT

PROGRAMMERS THAT HAVE SELECTED THE VIDEOCIPHER II SYSTEM

PAY PROGRAMMERS

* HBO
* CINEMAX
* FESTIVAL

* SHOWTIME
* THE MOVIE CHANNEL

THE DISNEY CHANNEL

* SELECTV

* AMERICAN EXXXSTASY

PLAYBOY

* FIRST CHOICE (CANADA)

PAY-PER-VIEW PROGRAMMERS

* VIEWER'S CHOICE (2)

* REQUEST TV

* TELSTAR (3)

* CABLE VIDEO STORE

BASIC PROGRAMMERS

* CNN
* HEADLINE NEWS

* WTBS
TEMPO

MTV
VH1
NICKELODEON

* ESPN

* WOR

* WGN
* WPIX
* KTVT

* CBN CABLE NETWORK

* USA NETWORK

* PRIMETIME 24 (SBN:3)

* NETLINK USA (6)

ARTS & ENTERTAINMENT

LIFETIME

AMERICAN MOVIE CLASSICS

BRAVO

NASHVILLE NETWORK

BROADCASTERS

PUBLIC BROADCASTING SERVICE[1]

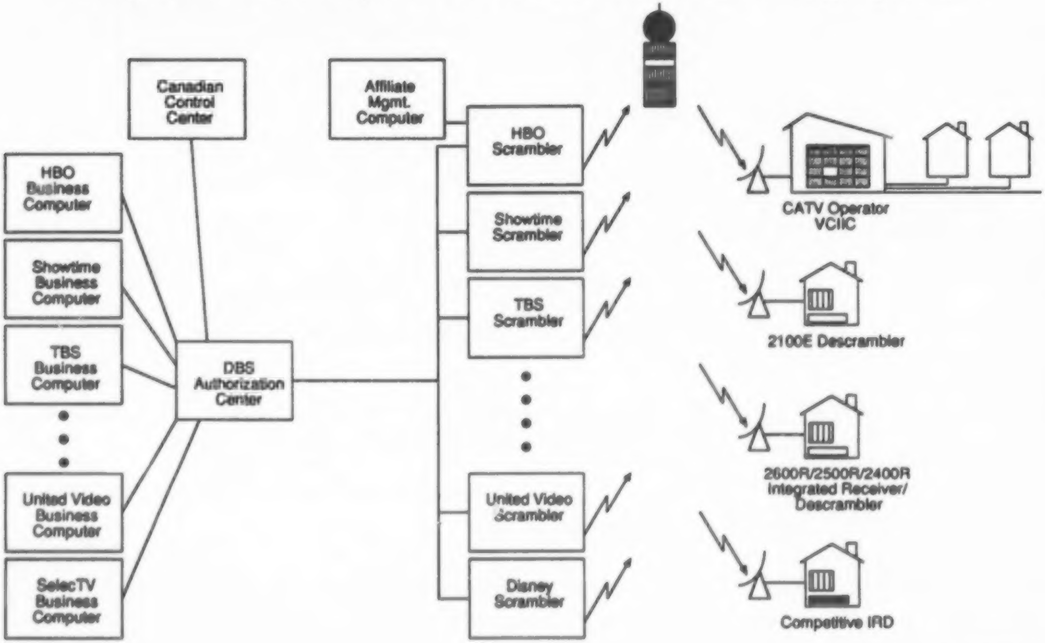
*CURRENTLY SCRAMBLED (11/15/87)

---

[1] FOR HIGH QUALITY STEREO AUDIO DISTRIBUTION

5200-4

Integrated VideoCipher® II CATV/DBS Scrambling System



Canadian Control Center

Affiliate Mgmt. Computer

HBO Business Computer

Showtime Business Computer

TBS Business Computer

United Video Business Computer

SelecTV Business Computer

DBS Authorization Center

HBO Scrambler

Showtime Scrambler

TBS Scrambler

United Video Scrambler

Disney Scrambler

CATV Operator VCIIC

2100E Descrambler

2600R/2500R/2400R Integrated Receiver/ Descrambler

Competitive IRD

GENERAL
INSTRUMENT

GENERAL INSTRUMENT

VIDEOCIPHER II EQUIPMENT MANUFACTURERS

- SCRAMBLERS AND COMMERCIAL DESCRAMBLERS
  - GENERAL INSTRUMENT
- CONSUMER DESCRAMBLER MODULES
  - GENERAL INSTRUMENT
  - CHANNEL MASTER
- CONSUMER STAND-ALONE DESCRAMBLERS
  - GENERAL INSTRUMENT
  - (CHANNEL MASTER VIA PRIVATE LABEL)
- CONSUMER INTEGRATED RECEIVER/DESCRAMBLERS
  - GENERAL INSTRUMENT
  - BIRDVIEW
  - CHANNEL MASTER
  - CHAPARRAL
  - COMMAND PERFORMANCE
  - R. L. DRAKE
  - DX COMMUNICATIONS
  - ECHOSPHERE
  - HOUSTON TRACKER
  - NORSAT
  - PANASONIC
  - PLATINUM COMMUNICATIONS
  - PROSAT
  - STS
  - STANDARD COMMUNICATIONS
  - TEE-COMM
  - TEKNIKA
  - TOSHIBA
  - UNIDEN
  - WINEGARD
  - ZENITH

8200-5

GENERAL INSTRUMENT

VIDEOCIPHER II SYSTEM FEATURES

- HIGH QUALITY VIDEO AND STEREO DIGITAL AUDIO
- FLEXIBLE ADDRESSING FOR MILLIONS OF SUBSCRIBERS
- TIERED SUBSCRIPTION SERVICE AS WELL AS IMPULSE PAY-PER-VIEW (IPPV)
- MULTI-LEVEL PROGRAM LOCK-OUT CAPABILITY (PARENTAL CONTROL)
- PROVISION FOR DBS BLACKOUT BY GEOGRAPHICAL AREA, WITH SWITCHING TO A BLACKOUT FEED
- VERSATILE MESSAGE AND DATABASE ACCESS SERVICES
- SUBSCRIBER INTERACTION VIA KEYPAD AND ON-SCREEN DISPLAY FOR IPPV SELECTION, PROMPTING, PROGRAM GUIDE, MESSAGES, AND OTHER PURPOSES
- AUXILIARY DATA CHANNEL
- ALL ASPECTS OF SYSTEM OPERATION DESIGNED TO OPERATE RELIABLY, EVEN AT LOW CHANNEL SIGNAL-TO-NOISE RATIOS

5200-8

GENERAL
INSTRUMENT

VIDEOCIPHER II SIGNAL SECURITY

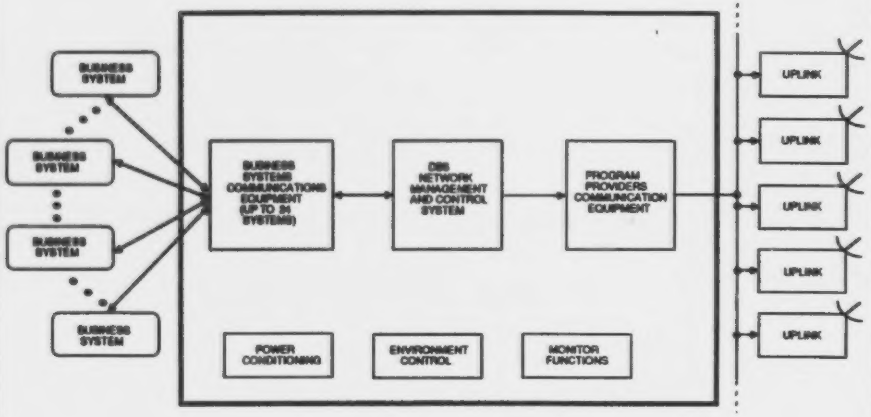
- VIDEO IS SCRAMBLED BY REMOVING ALL SYNC INFORMATION AND INVERTING THE SIGNAL
- DIGITAL AUDIO IS COMPLETELY ENCRYPTED WITH THE DES ALGORITHM
- BREAKING THE ENCRYPTION REQUIRES DISCOVERING THE DES "KEY"
  - TRIAL AND ERROR IS THE ONLY POSSIBLE ATTACK
  - 72 QUADRILLION KEYS MUST BE TRIED
  - THE ENCRYPTION KEY CHANGES FREQUENTLY

GENERAL INSTRUMENT

VIDEOCIPHER II AUTHORIZATION

- EACH DESCRAMBLER CONTAINS UNIQUE, SECRET IDENTITY DATA
- EACH DESCRAMBLER MUST BE INDIVIDUALLY AUTHORIZED OVER THE SATELLITE TO RECEIVE SCRAMBLED SERVICES
- AUTHORIZATION MESSAGES ARE INDIVIDUALLY ENCRYPTED WITH DESCRAMBLER UNIQUE DATA, USING THE DES ALGORITHM

DBS AUTHORIZATION CENTER BLOCK DIAGRAM


BUSINESS SYSTEM
BUSINESS SYSTEM
BUSINESS SYSTEM
BUSINESS SYSTEM
BUSINESS SYSTEMS COMMUNICATIONS EQUIPMENT (UP TO 24 SYSTEMS)
DBS NETWORK MANAGEMENT AND CONTROL SYSTEM
PROGRAM PROVIDERS COMMUNICATION EQUIPMENT
UPLINK
UPLINK
UPLINK
UPLINK
UPLINK
POWER CONDITIONING
ENVIRONMENT CONTROL
MONITOR FUNCTIONS

GENERAL
INSTRUMENT

DBS AUTHORIZATION CENTER

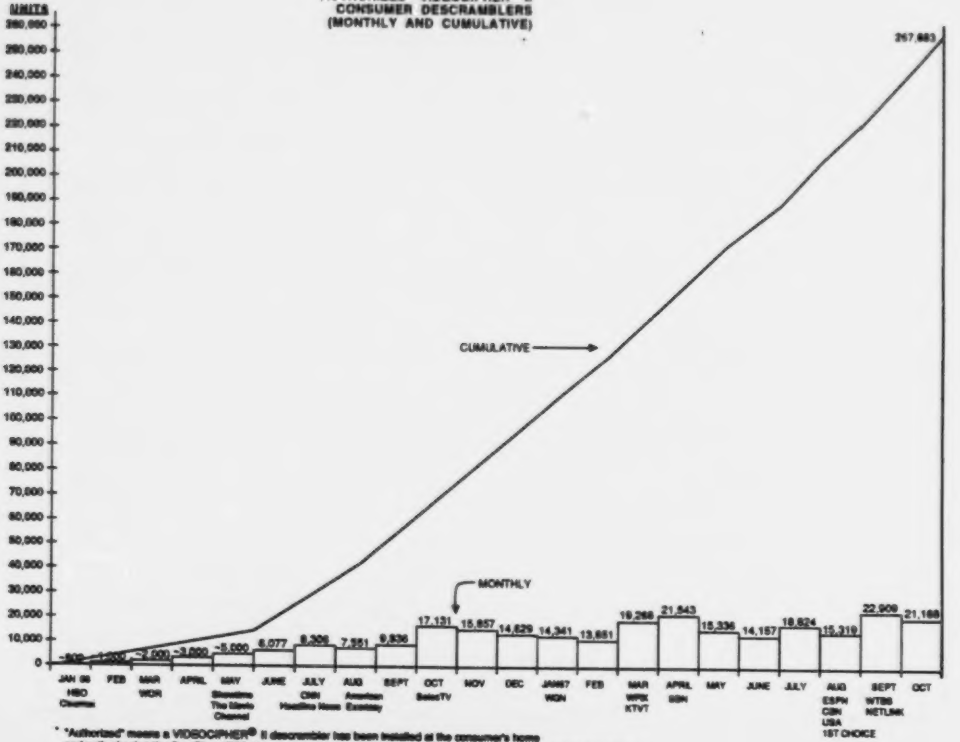
- RECEIVES AUTHORIZATION REQUESTS FROM MULTIPLE INDEPENDENT DBS OPERATORS
- CREATES A COMPOSITE STREAM OF DBS AUTHORIZATION MESSAGES FOR TVRO OWNERS
- DISTRIBUTES DBS AUTHORIZATION STREAM TO ALL PARTICIPATING PROGRAMMERS FOR INSERTION INTO THEIR SCRAMBLED SIGNALS
- EACH SCRAMBLED SIGNAL THUS CONTAINS DBS AUTHORIZATION MESSAGES
    - FOR ALL TVRO OWNERS
    - FOR ALL SCRAMBLED CHANNELS

GENERAL
INSTRUMENT

DBS OPERATION FOR TVRO OWNERS

- ONLY ONE CONSUMER DESCRAMBLER IS NEEDED FOR ALL VIDEOCIPHER II SCRAMBLED CHANNELS
- CONSUMER DESCRAMBLERS RECEIVE THEIR AUTHORIZATION MESSAGES NO MATTER WHICH SCRAMBLED CHANNEL IS BEING WATCHED
- TVRO OWNERS CAN ORDER SERVICES FROM MULTIPLE, COMPETING DBS OPERATORS
- EACH SCRAMBLED CHANNEL CAN BE OFFERED BY MULTIPLE, COMPETING DBS OPERATORS
- PROVIDES
  - MAXIMUM AUTHORIZATION EFFICIENCY
  - FULL COMPETITION

AUTHORIZED* VIDEOCIPHER® II CONSUMER DESCRAMBLERS (MONTHLY AND CUMULATIVE)



* "Authorized" means a VIDEOCIPHER® II descrambler has been installed at the consumer's home and authorized at the San Diego DBS Authorization Center to receive programming the consumer elects to purchase.

GENERAL INSTRUMENT

SUBSCRIBER INTERACTION IN VIDEOCIPHER II

USING KEYPAD AND ON-SCREEN DISPLAY, SUBSCRIBER MAY:

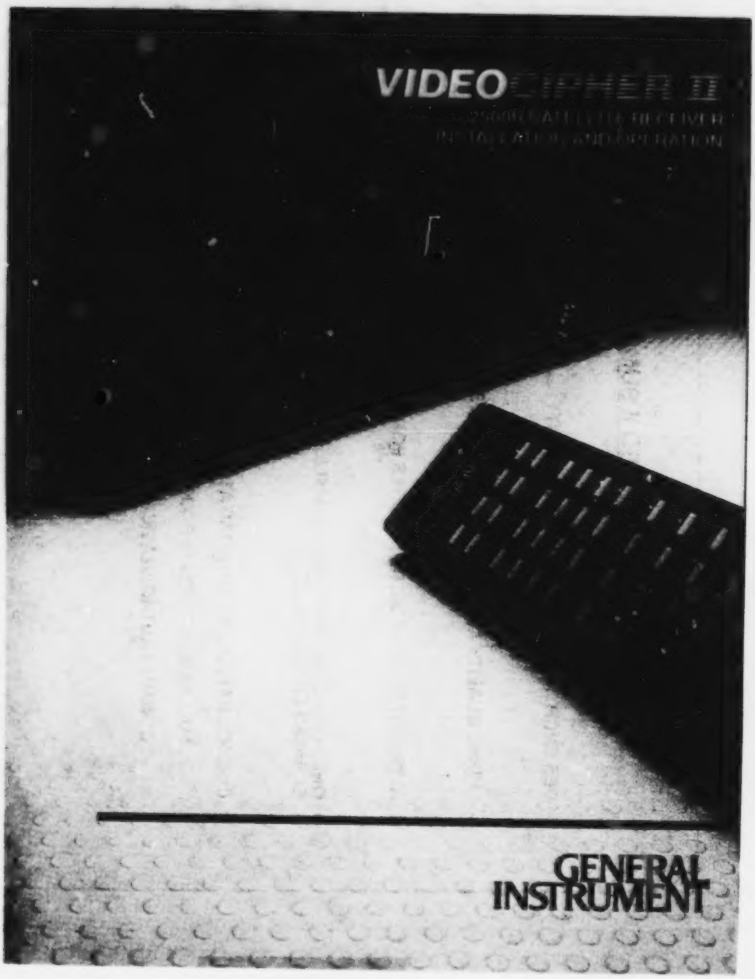
- SELECT CHANNEL
- CONTROL VOLUME
- SELECT A PAY-PER-VIEW PROGRAM
- PERUSE PROGRAM GUIDE AND OTHER AVAILABLE DATA BASES
- RECEIVE PERSONAL MESSAGES
- OBTAIN CREDIT AVAILABLE INFORMATION
- EXAMINE IPPV VIEWING HISTORY
- SELECT MULTI-LEVEL LOCK OUT OF PAY-PER-VIEW OR OTHER PROGRAMMING
- CHANGE PASSWORDS
- SELECT SECOND LANGUAGE
- VIEW "HELP" SCREENS
- OBSERVE HOME TERMINAL DIAGNOSTIC SCREEN

5200-6

GENERAL INSTRUMENT

VIDEOCIPHER II SUMMARY

- DES ENCRYPTION FOR HIGHEST SECURITY
- SIGNAL QUALITY ACTUALLY IMPROVED BY SCRAMBLING
- ATTRACTIVE CONSUMER FEATURES FOR ENHANCED DBS SERVICES
- ONLY ONE CONSUMER DESCRAMBLER FOR ALL VIDEOCIPHER II SCRAMBLED CHANNELS
- CONSOLIDATED DBS AUTHORIZATION CENTER FOR
  - FULL COMPETITION IN PROGRAM SELLING
  - COMMON AUTHORIZATION FOR EFFICIENT MULTICHANNEL OPERATION



VIDEOCIPHER II

2500R SATELLITE RECEIVER
INSTALLATION AND OPERATION

GENERAL
INSTRUMENT

NOTE: Please fill out and return the Warranty Card to General Instrument. This will simplify the processing of any necessary warranty repairs.

Authorization Number

Please write your 2500R Authorization Number below. You will need it to receive authorization for viewing VideoCipher II channels. Your Authorization Number can be read on your TV using the on-screen display feature of the 2500R. (See page 16.)

Authorization Number__ __ __ __ __ __ __ __ __ __ __ __

Please write your 2500R's serial number (found on the back panel) in the space below. You will need it if you call General Instrument for service.

Serial Number________________________________

OPERATION PRECAUTIONS

WARNING
To reduce the risk of fire or electric shock, do not expose this appliance to rain or moisture. Do not open the cabinet. Refer servicing to qualified personnel only.

CAUTION
To prevent electric shock, do not use this (polarized) plug with an extension cord, receptacle or other outlet unless the blades can be fully inserted to prevent blade exposure.

The lightning flash with arrowhead symbol, within an equilateral triangle, is intended to alert the user to the presence of uninsulated "dangerous voltage" within the product's enclosure that may be of sufficient magnitude to constitute a risk of electric shock to persons.

The exclamation point within an equilateral triangle is intended to alert the user to the presence of important operating and maintenance (servicing) instructions in the literature accompanying the appliance.

CAUTION
RISK OF ELECTRIC SHOCK
DO NOT OPEN

CAUTION:
TO REDUCE THE RISK OF ELECTRIC SHOCK, DO NOT REMOVE COVER (OR BACK). NO USER-SERVICEABLE PARTS INSIDE. REFER SERVICING TO QUALIFIED SERVICE PERSONNEL.

ATTENTION
This consumer unit is intended for the authorized descrambling for personal use of those satellite television signals which have been scrambled using the VIDEOCIPHER® II scrambling format. Ownership or possession of the integrated receiver/descrambler does not entitle (nor enable) the owner or possessor hereof to receive descrambled VIDEOCIPHER® II television signals. To obtain proper authorization for this consumer integrated receiver/descrambler, the owner or possessor must separately contract with the appropriate programming provider(s) or his (their) agent(s).

U.S. government restrictions may prohibit the export of this product outside the United States, its territories or possessions without a validated export license.

© Copyright 1987 Cable/Home Communication Corp. a subsidiary of General Instrument Corporation, all rights reserved.

VideoCipher® is a registered trademark of General Instrument Corporation.

U.S. Patent No.'s 4,608,456 and 4,613,901 and patents pending.

Table of Contents

PAGE

Your Satellite Entertainment System 4
Your Home TVRO System 5
Your [illegible] System 6
Front Panel Keys and Indicators 6
Remote Control 7
Back Panel 8
Antenna Positioner Power Supply 9
Programming Your [illegible] 10
Setting the Limits 10
Programming Satellites 12
Channel Tuning 16
VideoCipher II Authorization 16
Video Fine Tuning 17
Daily Use of Your Receiver 18
Channel Selection 18
Parental Supervision 19
Audio Tuning 19
VideoCipher II Programs 20
VCR Use 21
Installing Your [illegible] 22
Preparing Your System 22
System Components 22
Installation Options 25
Connecting the Antenna Positioner Power Supply 26
Actuator Connections 26
Connecting the Receiver 26
Accessory Connections 28
Maintaining Your [illegible] 28
Troubleshooting 29
Wiring Diagrams 31
Specifications 34

General Instrument Corporation purchased the VideoCipher Division of M/A-Com Inc. in September 1986.

A New Era in Home Entertainment

Congratulations! You're about to experience a whole new world of home entertainment. With your TVRO (TV Receive Only) satellite system, you have access to over a hundred channels . . . 24 hours a day.

Thank you for selecting our VideoCipher® II 2500R satellite receiver. General Instrument designed it to give you the ultimate in convenience and quality for satellite TV viewing.

If this is your first experience with a TVRO system, you'll find that you can now watch an incredible variety of broadcast programs. If you are an old hand at satellite watching, you'll find that your new 2500R will provide you with the features that you've been looking for.

Using This Manual

This Manual contains the detailed instructions for installing and using your new 2500R. Use the Manual when you install the system, and use it as a reference later on, when you are modifying your program entries or trying out new features.

We've also provided you with a ***Pre-Installation Checklist***, which will help you or your installer prepare your satellite system for the 2500R. Please complete it before you install the receiver. Finally, we've enclosed a brief ***User's Guide***, which we hope you'll place near your receiver. It contains all of the directions you'll need for daily use.

VIDEOCIPHER® II 2500R FEATURES

Your 2500R offers a collection of features that provide both convenience and high quality channel reception.

Integrated System

The 2500R combines the receiver, descrambler and positioner circuitry in a single system.

Remote Control Access

Program viewing can be controlled through the Remote Control, including satellite selection, channel tuning and VideoCipher II features.

Digital Stereo Sound

The 2500R provides two digital audio channels for VideoCipher II programs. You also have the option of tuning mono, discrete or matrix stereo subcarriers.

Channel and Program Lockout

Your 2500R provides you with two methods for restricting program viewing. You can lock out selected channels completely, or you can set program rating ceilings for VideoCipher II channels.

C and Ku-Band Ready

The 2500R can tune both C-band and the growing number of Ku-band programs. The receiver can select up to 24 C-band and 32 Ku-band channels on 21 different satellites.

TI Filter

Your 2500R has a built in TI Filter (Terrestrial Interference) as well as a 70 MHz loop-through for attaching an optional external TI filter. You can rely on the receiver's built-in filter to reduce signal interference from the ground, or you can attach additional TI filters on the loop-through circuit.

Record While Watching

The 2500R is designed for installation with your VCR. You can tape a satellite program while watching local VHF or cable TV. Your options depend on how you wire the system.

Some VideoCipher features described in this manual may not be offered by all programmers on all channels.

Your Satellite Entertainment System

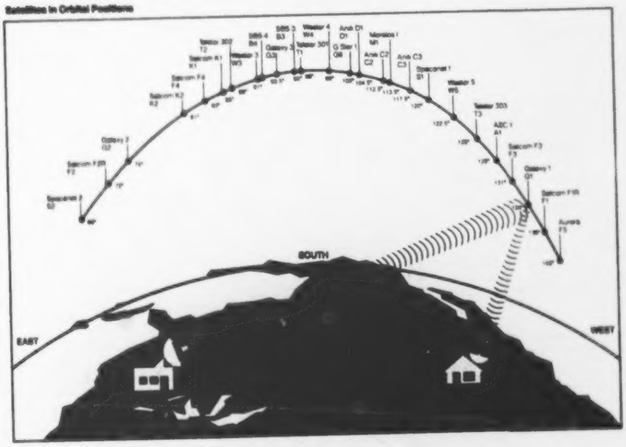
The TVRO World

A satellite TV signal originates in a TV studio. The signal is sent to a transmitter (called an *uplink*), which beams it to a satellite orbiting 22,000 miles above the earth. The satellite receives the signal, amplifies it, and transmits it back to earth.

Communications satellites are "parked" in an orbital arc called the Clarke Belt that circles the globe at the Equator. Because of their orbital height, speed and position, the satellites in the Clarke Belt appear to be fixed in space. In reality, they are simply moving at the same rate as the earth revolves. Since the satellites stay in the same location relative to the earth, you can locate them and store their positions in your 2500R's memory.

Most US broadcast satellites are in orbit over the equator south of our country and aim their signals at the Midwestern United States. The signal sent from the satellite to earth is like a flashlight beam. It is most concentrated at the center, and is less concentrated as you move outward in the *footprint* of the satellite signal. That's why you may need a 12-foot dish in Florida to get the same signal strength as a 6-foot dish in Nebraska.

Satellites in Orbital Positions


Spacenet 2
S2
Satcom F2R
F2
Galaxy 2
G2
Satcom K2
K2
Satcom F4
F4
Satcom K1
K1
Telstar 302
T2
Westar 3
W3
SBS 4
B4
Galaxy 3
G3
SBS 3
B3
Telstar 301
T1
Westar 4
W4
G Star 1
Anik D1
D1
Morelos 1
M1
Anik C2
C2
Anik C3
C3
Spacenet 1
S1
Westar 5
W5
Telstar 303
T3
ABC 1
A1
Satcom F3
F3
Galaxy 1
G1
Satcom F1R
F1
Aurora
F5
SOUTH
EAST
WEST

Your Home TVRO System

A typical TVRO system using the 2500R will consist of the following components.

Dish Antenna

Your *dish antenna* collects and concentrates the signal from the satellite.

Actuator Arm

An *actuator arm* retracts and extends to move the dish along the orbital arc. The Actuator can be controlled by the optional 2500R Antenna Positioner Power Supply.

Feedhorn and Polarizer

The *feedhorn* mounted above the center of the dish accepts the concentrated satellite signal. It also contains the *polarizer* to select the polarity of the signal that will be sent to the LNB.

LNB

By the time the TV signal travels 22,000 miles to your dish antenna, it is very weak. The *LNB* (Low Noise Block DownConverter) amplifies the signal over 100,000 times so that it can be used by your 2500R receiver.

You may use single or dual feed LNBs, depending on the feedhorn that you install. *Single Feed* LNBs will accept the horizontal or vertical signals from the polarizer, depending on which channel you want to watch. *Dual Feed* LNB systems accept both horizontal and vertical signals at the same time. They are used in multiple receiver systems.

Your 2500R will *not* function with an *LNA* (Low Noise Amplifier) or *LNC* (LNA with standard downconverter), but may be installed using an LNA connected to a *block downconverter (BDC)*.

Receiver

Your *2500R Receiver* processes the signal from the LNB and allows you to tune the channel that you want to watch. The receiver can store the location and tuning information for up to 21 satellites along with specific entries for your favorite channels.

Antenna Positioner Power Supply

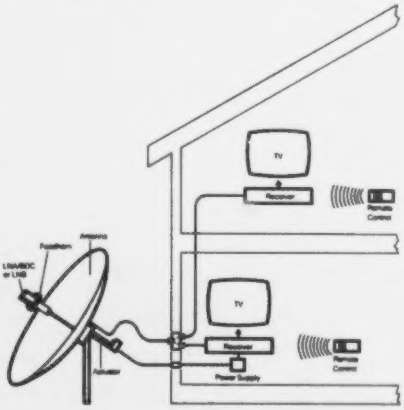
When you install your 2500R with the optional Antenna Positioner Power Supply, your system will be able to automatically aim the dish towards any of your pre-programmed satellites.

TV Set

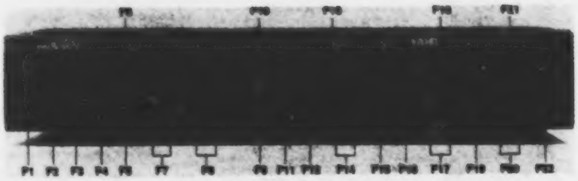
The final destination of the satellite signal is your *TV*, which can be a monitor or standard TV set. You can have multiple receivers and multiple TV sets in the same satellite system. You can receive stereo sound by connecting your 2500R to your home stereo system.

Remote Control Unit

The 2500R *Remote Control Unit* allows you to select channels and control all of the functions you'll need for daily viewing and operation.



Your 2500R System



FRONT PANEL KEYS AND INDICATORS

The front panel of your 2500R contains the indicators or (LEDs) and control keys that will help you tune and adjust your reception.

NOTE: All 2500R keys (except [SAT/TV]) are for tuning satellite channels only. They have no effect on VHF, UHF or Cable programming.

Many of the 2500R front panel keys can also be found on the Remote Control.

F = Front Panel

R = Remote Control

F1 or R1 POWER
This key turns on the main power to the 2500R. When power is ON, several LEDs on the receiver will light.

When power is OFF (with the receiver plugged in), only the STDBY LED will be on.

F2 or R2 SAT/TV
Use this key to switch the receiver's output to your TV between an attached VHF/Cable TV input and the input from your satellite system.

When your 2500R is in the satellite mode, the SAT LED will light.

F3 POLARITY
Use this key to select the proper polarity (Normal or Reverse) for each satellite.

The REVERSE LED indicates that you have selected the REVERSE (Galaxy) format.

F4 LOCK
This key selects the MEMORY LOCK ON or OFF mode of the 2500R.

[LOCK] ON (MEMORY LOCK LED lit) is used for normal daily use. [LOCK] OFF mode is used for entering satellites in the memory.

The key must be pressed for 3 seconds to go from [LOCK] ON to [LOCK] OFF. [LOCK] OFF to [LOCK] ON is instantaneous.

F5 STORE
Use this key to store satellite location and tuning information in the 2500R's memory.

F6 REMOTE CONTROL TARGET
This is the target point for the infrared Remote Control signal. The LED below the target will blink when it is receiving a signal from the Remote Control.

F7 ALPHA/NUM
Use these keys to name the satellites that you store in the 2500R memory. You can choose any letter from A-Z (except L) and any number from 1-9.

These keys, along with the [STORE] key, are also used for MASTER RESET.

F8 SKEW ▲ ▼
Use these keys to adjust the angle of your system's polarizer for each satellite.

F9 or R4 SUB AUDIO
This key selects the additional subcarrier audio service that is broadcast with most VideoCipher II programs.

F10 VIDEOCIPHER SIGNAL
This LED will glow when you are tuned to a VideoCipher II channel.

F11 AUDIO BW
Use this key to select the proper bandwidth for audio subcarriers.
The WIDE LED will light when you select a wide bandwidth.

F12 or R8 MODE
Press this key to select the proper audio subcarrier format: Mono, Discrete Stereo, Matrix Stereo or Mono 6.8. Each mode has an LED that will light when it is selected.

When you choose DISC (Discrete), the 2500R will automatically select a narrow bandwidth. You can override this selection with the [AUDIO BW] key.

F13 SIGNAL STRENGTH
These LEDs indicate the relative strength of the satellite signal.

F14 or R9 FINE TUNE ▲ ▼
Use these keys to fine tune the video signal for a selected channel.

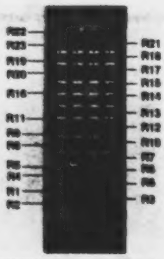
F15 AFC
When the AFC is ON (LED lit), the 2500R will automatically track and adjust the video frequency for the channel.

F16 TI FILTER
The 2500R has a built-in Terrestrial Interference (TI) filter. This key turns the Filter ON or OFF for each channel you select. The LED will light when the TI Filter is ON.

F17 or R6 EAST/WEST
These keys can be used for continuous dish movement when the 2500R is in [LOCK] OFF mode.

When the 2500R is in the [LOCK] ON mode, use the [EAST] [WEST] keys on the front panel to select the next stored satellite.

592



In [LOCK] ON mode, the [EAST] and [WEST] keys on the *Remote Control* provide dish position adjustment in 10 steps.

When the dish is moving East, the EAST LED will light. When the dish is moving West, the WEST LED will light.

F18 SATELLITE DISPLAY

This 2-digit indicator displays the "name" you select for each satellite. It also displays error codes for some system problems as well as prompts for storing and recalling Favorite Channels.

The Satellite Display is also used with the Channel Display [F21] to show subcarrier audio frequency.

F19 SCAN

This key turns the automatic scanning feature ON and OFF for satellite location in the [LOCK] OFF mode.

F20 or R13 CHANNEL ▲ ▼

Use these keys to change channel up or down.

F21 CHANNEL DISPLAY

This 2-digit LED will display the channel that your receiver is currently tuned to. When you are using Parental Supervision, a dot will appear in this display.

The Channel Display is used with the Satellite Display [F18] to show subcarrier audio frequency.

F22 C/Ku

This key selects the correct satellite frequency band in the [LOCK] OFF mode. LEDs will indicate which band you have selected.

REMOTE CONTROL

The Remote Control contains additional keys that are not also found on the front panel. The Remote Control keys are organized in 3 groups.

1. The 2 gray areas at the top are for VideoCipher II control.
2. The blue area keys are for Audio tuning.
3. The gray area keys at the bottom are for satellite selection and fine tuning.

NOTE: All Remote Control keys (except SAT/TV) are for tuning satellite channels only. They have no effect on VHF, UHF or Cable programming.

The back of the Remote Control has space for you to write the satellite and channel for your Favorite Channel entries. The back panel also has a compartment for installing 2 AAA alkaline batteries. The Remote Control is effective at a range of 20 feet, but will not operate through walls.

Channel Selection and Tuning Keys

R16 NUMBER KEYS

These keys, 0-9, are used for direct channel access. They are also used to enter passwords and other selections to set up your VideoCipher II services.

R15 FAV

[FAV] and the number keys are used to store and recall up to 10 favorite channels.

R14 PS

This key is used to lock out access to a specific channel for Parental Supervision. A dot will appear in the channel display when Parental Supervision is ON.

R10 VOLUME ▲ ▼

These keys can be used to adjust the channel volume.

R9 MUTE

This key will turn off the satellite channel audio.

R7 AUDIO A/AUDIO B ▲ ▼

Use these keys to tune the subcarrier audio frequency.

R8 NEXT SAT

Use this key to move the dish to the next programmed satellite in the [LOCK] ON mode.

VideoCipher® II Control Keys

R23 VIEW

Use this key to check the title, running time and other information about the program you are watching.

R22 TEXT

VideoCipher II channels provide text information to their users. These messages can include news bulletins, program promotions and other special notes. Use the key to view channel and service related text on your TV screen.

R21 ◄ ►

Use these keys to move back and forth in the VideoCipher II text files or to change program rating limits.

R20 SETUP

Use this key along with the number keys to customize your VideoCipher II channel services.

R19 NEXT PRG

This key allows you to read information on your TV about the next scheduled program on a VideoCipher II channel.

R18 MESSAGE

Every so often, your program supplier will have a personal message for you about your subscription. If there is a message for you, you will see a flashing asterisk (*) on your TV screen. Press the [MESSAGE] key to read messages on your TV screen.

R17 HELP

Press this key to read HELP messages related to VideoCipher II controls.

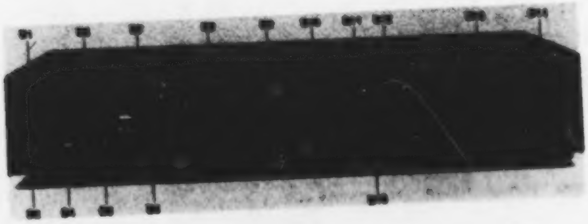
R11 CANCEL

Press the [CANCEL] key to clear any numbers that you enter incorrectly.

R12 ENTER

Use this key to confirm selections and password entries for VideoCipher II channel setup.

Your 2500R System



BACK PANEL

Your 2500R can be connected to a variety of accessories. Please refer to the wiring diagrams on pages 25 and 26 or have your installer verify that you have made the proper connections.

B1 FUSE
This screw cover holds the 125V 2Amp main fuse for the 2500R.

B2 AC POWER
115 VAC, 60Hz, 50W AC power cord.

B3 CH3-CH4
This switch sets the channel for the output to a standard TV. It should be set to the weaker of these two local VHF channels in your area. This switch setting should be the same as the channel setting on your TV.

B4 VHF IN FROM ANT
Connect your VHF antenna or cable system lead wire to this connector.

B5 VHF OUT TO TV
This connector should be attached to the VHF input on your television set.

B6 950-1450 MHz IF IN
This connector will accept the 950-1450 MHz signal from the LNB. It will carry a + 18 volt power output to the LNB.

B7 70MHz IN AND OUT
This is the 70MHz loop-through for attaching an external TI filter. Your 2500R comes with a 6-inch loop cable attached to these connectors.

This cable must remain attached if you are not using an external filter.

B8 SUBCARRIER OUT
Provides unclamped, unfiltered baseband video up to 8 MHz for external stereo processors, data demodulators, or external descramblers.

B9 VIDEO OUT
Connect your monitor or VCR to this output if it accepts a baseband (RCA-type) video connector. If your TV has both RF and baseband inputs, we recommend using baseband.

B10 R-AUDIO-L
Connect these RCA-type outputs to your stereo system or VCR if you want to tune or record stereo audio.

B11 DATA
This RCA-type connector is for future applications.

B12 IPPV
This RCA-type connector is for future applications.

B13 TERMINAL BLOCK
The terminal block is used to connect accessories and system components to the 2500R.

R1 and R2
These terminals are for Remote Eye attachment.

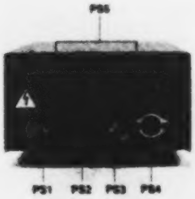
+ 5V/PULSE/GND
Connect your mechanical polarizer to these terminals.

H/V
Use these terminals to attach a coaxial relay for dual LNB and multiple receiver installations.

C/Ku
Use this terminal to attach a coaxial relay for dual band installations.

B14 ANT POSITIONER
This 5-pin DIN connector is used to attach the optional Antenna Positioner Power Supply to the 2500R. The required cable is packed with the Antenna Positioner Power Supply.

B15 AUTHORIZATION NUMBER
You can read the first 8 numbers of your Authorization (Address) Number through this window. See page 16 for the directions for reading your full 12-digit number.



ANTENNA POSITIONER POWER SUPPLY (Optional)

The Antenna Positioner Power Supply is used to provide dish position control to the 2500R.

PS1 FUSE

This screw cover holds the 125V 3Amp main fuse for the Antenna Positioner Power Supply.

PS2 UNSWITCHED AC

This output provides continuous 115V 1Amp unswitched AC power for the receiver.

PS3 AC 115V 2A

AC line cord.

PS4 TO RECEIVER

Attach the 6-foot DIN cable to the 2500R here.

PS5 TERMINAL BLOCK

Power and signal wires for the dish should be connected to the Antenna Positioner Power Supply terminal block. Actuators with Hall Effect sensors will use +5, PULSE and GND. Actuators with a Reed Switch will use only PULSE and GND.

+5

Attach the +5 volt lead from actuators with Hall Effect sensors to this terminal.

PULSE

Attach the Pulse lead from the actuator to this terminal.

GND

Attach the Ground lead from the actuator to this terminal.

SH

Attach the uninsulated shield wire from the actuator to this terminal.

MOTOR M1

Attach one of the motor leads from the actuator to this terminal.

MOTOR M2

Attach the other motor lead from the actuator to this terminal.

Programming Your 2500R

About Programming

Programming involves "teaching" your 2500R to remember your satellite and channel selections. Use the control keys on the front panel and the Remote Control to enter information in the receiver's memory.

Remember: To locate satellites and enter them in the 2500R memory, the receiver *must* be in [LOCK] OFF mode.

Later, when you store Favorite Channels and perform other channel setup functions, you will set [LOCK] ON.

The following chart indicates how each key functions in the [LOCK] OFF mode.

[LOCK] OFF Key Functions	
Front Panel	
[EAST]	**Move Dish East (continuous)**
[WEST]	**Move Dish West (continuous)**
Remote Control	
[EAST]	**Move Dish East (continuous)**
[WEST]	**Move Dish West (continuous)**
[NEXT SAT]	**No Function**

Your System

Most 2500Rs will be used in single feed, single receiver installations. Please refer to the system diagrams on page 25 to see how your installation has been wired.

Limits

Limits are programmed into the 2500R to help prevent damage to your satellite dish. The limits will prevent the dish from moving past the points that you set.

Your limits *must* be programmed *before* you can enter satellite locations into the 2500R memory.

Setting the Limits

1. Set the 2500R in [LOCK] OFF mode by pressing and holding the [LOCK] key for 3 seconds.
2. Move the dish to the ***fully retracted*** position by pressing the [EAST] or [WEST] key. The satellite display will show [ж 2] when the dish is fully retracted, then change to [ж–]

   If you are West of the Rockies, this will be the East limit.
   If you are East of the Rockies, this will be the West limit.

   2a. Use the [EAST] or [WEST] key to jog the dish back from the limit. The EAST or WEST LED will flash, and an [ж–] will appear in the display.

   2b. Press [STORE] **and** the [EAST] or [WEST] key ***together*** (whichever one you used to move the dish to its fully retracted position). The display should now read [EL] or [WL], then blink twice to verify that the limit is stored.
3. Use [EAST] or [WEST] to move the dish to the ***fully extended*** position. When you reach the limit, the satellite display will show [ж 2].

   If you are now setting the *East* limit, [<–] will appear in the display.

   If you are now setting the *West* limit, [>–] will appear in the display.

   3a. Press [STORE] **and** the [EAST] or [WEST] key ***together*** (whichever one you used to move the dish to its fully extended position). The display should now read [EL] or [WL]. The display will blink twice to verify that the limit is stored.
4. To check that you have set the limits, use the [EAST] and [WEST] keys to move the dish. The [EAST] or [WEST] LEDs will light and the display will show [--]. Check to see that the dish stops at the limits and [EL] or [WL] shows in the display at each limit.

ACTION	DISPLAY
[LOCK] OFF 3 Seconds	LED OFF
[EAST] Or **[WEST]**	**[ж 2]** **[ж–]** (Steady)
[EAST] Or **[WEST]**	**[ж–]**
[STORE] And **[EAST]** Or **[WEST]**	**[EL]** Or **[WL]**
[EAST] Or **[WEST]**	**[ж 2]** **[EAST]** LED and **[<–]** Or **[WEST]** LED And **[>–]**
[STORE] And **[EAST]** Or **[WEST]**	**[EL]** Or **[WL]**

Changing the Limits

If you have set the limits too far towards the center of the arc to receive certain satellites, you can reset them as follows:

	ACTION	DISPLAY
1. Set the 2500R in [LOCK] OFF mode.	**[LOCK]** OFF 3 Seconds	LED OFF
2. Use the [EAST] and [WEST] keys to move the dish to the limit that you want to change. [EL] or [WL] will show in the display.	**[EAST]** Or **[WEST]**	**[EL]** Or **[WL]**
3. Press and hold the [STORE] and [ALPHA] keys together for 3 seconds, until you see [>--] or [-<-] in the display.	**[STORE]** And **[ALPHA]** 3 Seconds	[>--] Or [-<-]
4. Use the [EAST] and [WEST] keys to jog the dish to the new limit position.	**[EAST]** Or **[WEST]**	
5. Press [Store] and the [East] or [West] key **together**. The display should now ready [EL] or [WL], then blink twice to verify that the limit is stored.	**[STORE]** And **[EAST]** Or **[WEST]**	**[EL]** Or **[WL]**

If You Don't Have the Optional Antenna Positioner Power Supply

You can use your 2500R as a receiver only and use your existing positioner to locate satellites. However, you will still need to store [EL] and [WL] in the receiver's memory.

1. Set [LOCK] OFF.	**[LOCK]** OFF	LED OFF
2. Press [STORE] [ALPHA] [NUM] **at the same time** and hold them for 3 seconds. This clears the 2500R's memory.	**[STORE]** Plus **[ALPHA]** Plus **[NUM]** 3 Seconds	
3. Press [STORE] and [EAST]. The satellite display will blink twice and display [EL].	**[STORE]** And **[EAST]**	**[EL]**
4. Press [STORE] and [WEST]. The satellite display will blink twice and display [WL]. The satellite display will then display [T0]. [T0] indicates that your 2500R is in the Tracker Off state.	**[STORE]** And **[WEST]**	**[WL]** **[T0]**

If you are using the 2500R as a receiver only, you can still store satellite names for easy recall of Polarization, C/Ku selection, and Skew parameters.

Programming Your 2500R

Programming Satellites: Introduction

Programming satellites is a simple step-by-step process. First, you'll locate the satellites and store their locations in the 2500R memory. You'll also store their features, including polarity, skew angle and frequency band.

It's best to start with C-band satellites. Once you have the satellite locations stored, you can begin to tune the channels. Then, you can store your favorite channels for 2-key remote control access. You can also lock out specific channels for Parental Supervision. Finally, you'll locate and tune Ku-band satellites and channels that you want to receive.

A Word About Polarization

Satellites broadcast channels in both horizontal and vertical polarity. Most polarizers will shift from horizontal to vertical upon command from your receiver. Other systems provide reception of both polarizations at the same time by using *dual feed* polarizers. This eliminates the need to shift back and forth, and is very useful for multiple receiver systems.

Some satellites will transmit Channel 1 (and all odd-numbered channels) in vertical polarity. For setup of the 2500R, this will be called *Normal (SatCom)* format. Others will transmit Channel 1 as horizontal. These satellites are called *Reverse (Westar or Galaxy)* format.

Satellite Chart

Satellite	Abbrev.	Location	Format	C	Ku
Spacenet 2	S2	69°	R	x	x
Satcom F2R	F2	72°	N	x	
Galaxy 2	G2	74°	R	x	
Satcom K2	K2	81°	R		x
Satcom F4	F4	82°	N	x	
Satcom K1	K1	85°	R		x
Telstar 302	T2	85°	N	x	
Westar 3	W3	91°	R	x	
SBS 4	B4	91°	R		x
Galaxy 3	G3	93.5°	R	x	
SBS 3	B3	95°	R		x
Telstar 301	T1	96°	N	x	
Westar 4	W4	99°	R	x	
G Star 1	G8	103°	R		x
Anik D1	D1	104.5°	R	x	
Anik C2	C2	112.5°	N		x
Morelos 1	M1	113.5°	R	x	x
Anik C3	C3	117.5°	N		x
Spacenet 1	S1	120°	R	x	x
Westar 5	W5	122.5°	R	x	
Telstar 303	T3	125°	N	x	
ASC 1	A1	128°	R	x	x
Satcom F3	F3	131°	N	x	
Galaxy 1	G1	134°	R	x	
Satcom F1R	F1	139°	N	x	
Aurora	F5	143°	N	x	

Programming Your Satellites: Procedure

Be sure to have a satellite program guide available before you begin to locate and store your satellites. It will be difficult to tell one satellite from another without one.

The following activities should be completed using the *front panel* keys.

1. Set [LOCK] ON.
2. Turn your TV on. Set the 2500R to the TV mode using the [SAT/TV] switch and tune the TV to a local VHF station. This will verify that your TV is properly hooked up to the 2500R.
3. Press [SAT/TV] to return to satellite mode. The TV should then be set to the same channel as the [CH3/CH4] switch on the back of the 2500R.
4. Set [LOCK]OFF. (Hold for 3 seconds.)
5. Move the dish to [WL]. It's best to start at the West end of the orbital arc and move towards the East.
6. Use the satellite chart at the left to locate your satellites.
   - 6a. Start *at the bottom* (West) and work up (East).
   - 6b. Using the [POLARITY] key, set the satellite format according to the chart for each satellite that you try to locate.
7. Press [SCAN]. The 2500R uses a rapid scan mechanism that will *not* lock onto a channel when it locates one. It is a rapid scan that is used only for locating satellites.
8. Using the [EAST] key, move the dish away from the limit. The East or West LED should light as the dish moves. A [- -] will appear in the display.
9. Watch the TV screen. Your 2500R will be scanning for channels in order to locate each satellite. When your dish is pointed at a satellite, you will see a quick blink of video on the screen. Release the [EAST] key to stop the dish movement. Your 2500R will continue to scan the channels.

ACTION	DISPLAY
[LOCK] ON	LED ON
[SAT/TV]	LED OFF
VHF	
[SAT/TV]	LED ON
[LOCK] OFF 3 seconds	
[EAST] Or [WEST]	[WL]
[POLARITY]	LED ON/OFF
[SCAN]	
[EAST]	[- -]
	Video Blink
[EAST]	

9a. Press [SCAN] when you see the video signal again. This will stop the scanning activity and lock the 2500R on a channel. Using the [CHANNEL ▲ ▼] keys, locate an *odd* numbered channel on the satellite.

9b. Use [EAST] and [WEST] to get the best picture. Don't worry about the audio yet. Audio will be tuned later.

9c. Use the [SKEW ▲ ▼] keys to improve the picture.

9d. Try to identify the satellite using the program guide.

10. Move to an even numbered channel. Use the [SKEW ▲ ▼] keys to adjust the picture. Use the program guide to identify the channel.

    Your 2500R stores skew information for both odd and even polarity for each satellite.

11. By checking several channels, you should be able to identify the satellite. If you guessed wrong on the satellite polarity, use the [POLARITY] key to change it.

    11a. If the Polarity setting is not correct, you will have to readjust the skew settings for both odd and even channels.

12. Use the [ALPHA/NUM] keys to name the satellite. Standard abbreviations are listed in the chart.

13. Press [STORE]. The display will blink twice. You have just stored the satellite location, polarity, name and skew adjustments in the 2500R memory.

14. Press [SCAN] again. Using the [EAST] key, look for the next satellite in the orbital arc. Repeat steps 6 through 13 for each satellite. Your 2500R can store up to 21 satellite locations.

ACTION	DISPLAY
[SCAN]	Stop Scanning
[CHANNEL ▲▼]	Odd Channel
[EAST] or [WEST]	Best Picture
[SKEW▲▼]	Best Picture
[CHANNEL ▲▼] [SKEW▲▼]	Even Channel
[POLARITY]	LED ON/OFF
[SKEW▼▲]	Best Picture
[ALPHA] [NUM]	Satellite Name
[STORE]	2 Blinks
[SCAN]	

Programming Your 2500R

Satellite Recall

Once you have stored a satellite location, you can return to it by pressing a few buttons.

1. Set [LOCK] ON.
2. If you are using the Remote Control, press [NEXT SAT] until you see the identifying initials of the satellite that you want to locate. NOTE: The 2500R will wait for 3 seconds before moving the dish. This prevents unnecessary movement of the dish until you have selected a satellite.
3. If you are using the front panel keys, press [EAST] or [WEST] (depending on the direction of the new satellite) until you see the identifying initials of the satellite that you are moving to.
4. When the 2500R locates the satellite, make any necessary adjustments to the picture using the [EAST] or [WEST] keys on the Remote Control.

Cancelling a Satellite

You can remove a satellite location and its tuning parameters from the receiver's memory.

1. Recall the satellite.
2. Set [LOCK] OFF. (Press key 3 seconds)
3. Press [STORE] and [ALPHA] at the same time and hold them for 3 seconds. The display will blink twice, and the satellite will be erased.

Master Reset

If your unit is returned from service or you want to completely reenter your satellite locations and channel tuning, use the Master Reset:

1. Set [LOCK] OFF. (Press key 3 seconds.)
2. Press the [ALPHA], [NUM] and [STORE] keys at the same time. Hold them for 3 seconds.

Your 2500R memory will be cleared.

Power Outages

If AC power is lost during dish movement, you may need to realign the satellite positions in your 2500R memory.

It is important that you check the dish position carefully while you are doing the realignment.

1. Set [LOCK] ON.
2. Recall a satellite that you are familiar with, such as G1. At this point, the dish will *not* be pointed in the right direction to receive G1. The dish may even have moved beyond your programmed limits.
3. Press the [STORE] and [NUM] keys *at the same time* for 3 seconds. The display should flash between [RA] (ReAlign) and [G1].
4. Use the [EAST] and [WEST] keys to locate G1 The display will continue to flash [RA] and [G1].
5. Press [STORE] and [NUM] for 3 seconds. The 2500R will realign all the satellite positions that were stored before the power outage [G1] will now show on the satellite display.

ACTION	DISPLAY
[LOCK] ON	LED ON
[ALPHA] [NUM]	Satellite Name [G1]
[STORE] And [NUM] 3 Seconds	[RA] Flash [G1] Flash
[EAST] Or [WEST]	[RA] Flash [G1] Flash
[STORE] And [NUM] 3 Seconds	2 Blinks [G1]

Ku-Band Satellite Location
We recommend that you store C-band satellites before attempting to store Ku-band satellites.

Remember: You can't locate a Ku band satellite unless your system is properly equipped for Ku-band reception.

1. Set [LOCK] OFF. (Press key 3 seconds)
2. Set the Ku LED ON with the [C/Ku] key on the front panel
3. Follow the same procedures as for C-band tuning, using [SCAN], [EAST] [WEST], and [SKEW ▲ ▼] to locate, optimize and identify the satellite.
4. Name the satellite using [ALPHA] and [NUM]
5. Press [STORE] to enter the satellite location in the 2500R memory

NOTE: Some satellites (Spacenet, Morelos) have both C and Ku transponders. Your 2500R cannot store both C and Ku parameters for the same satellite under the same name. Therefore, you should store these satellites as separate entries under different names.

For example, you can store Spacenet 1's C-band programming parameters as [S1]. You can store Spacenet 1's Ku-band parameters as [S2].

ACTION	DISPLAY
[LOCK] OFF 3 Seconds	LED OFF
[C/Ku]	LED ON
[SCAN] [EAST] Or [WEST] [SKEW ▲ ▼]	
[ALPHA] And [NUM]	
[STORE]	2 Beeps

Ku-Band Channels
Channels for Ku broadcasting have not been standardized as C-band channels have. In fact, several different Ku channel standards exist. Your 2500R has been designed to follow the format currently used by most services that are broadcasting in Ku-band.

If the satellite that you are tuning uses a different channel plan, you will still be able to receive its Ku channels. However, the channel numbers displayed on the 2500R may be different from those in your guide.

Channel Tuning

Tuning Your Channels

Once you have stored the location, skew and polarity for each satellite, you're ready to fine tune your channels and set up your VideoCipher II services.

Channel tuning activities should be done with your 2500R in the [LOCK] ON mode. In this mode, the front panel keys are used as follows:

[LOCK] ON Key Functions	
Front Panel	
[EAST]	Next Satellite East
[WEST]	Next Satellite West
Remote Control	
[EAST]	Move Dish East (10 Steps)
[WEST]	Move Dish West (10 Steps)
[NEXT SAT]	Next Programmed Satellite

NOTE: If you have set Parental Supervision ON (See page 18), the [EAST] and [WEST] keys *on the front panel* will *not* function. All dish movement is blocked under PS channel lockout.

VideoCipher® II Authorization

Here's how the VideoCipher II system works. A program supplier (premium movies, superstations, sports, news, pay per view) sends a scrambled signal from their uplink transmitter to the satellite. This same signal will contain coded authorization messages that are addressed to *individual receivers*. These messages will allow your 2500R to receive the VideoCipher II programming and descramble it.

When you subscribe to VideoCipher II programming, your supplier sends authorization messages over VideoCipher II channels to your 2500R receiver. If you discontinue a VideoCipher II service, the messages will not be sent, and you won't be able to view the programming.

The presence of VideoCipher II circuitry in your 2500R is not sufficient for program viewing. You will need to receive authorization from your local program supplier or contact the program distributors directly. They will set up an account for you and authorize your unit to descramble selected channels.

You can check the program distributor's number by tuning your 2500R to the channel that you want authorization for. Most services broadcast subscription information to unauthorized receivers.

The program distributor will need your Authorization Number, which can be read off your TV screen by pressing a few keys on your 2500R Remote Control.

VideoCipher® II Tuning

1. Turn your TV on and set the 2500R in [LOCK] ON.
2. Move the dish to a satellite that has VideoCipher II programming, and select a VideoCipher II channel. The VideoCipher Signal LED will light, but you will see only a black screen (with text) until you subscribe to the channel and receive authorization.
3. Press [SETUP] [1] on the Remote Control.
   - 3a. Your Authorization (Address) Number will appear on the screen. The first 8 digits of this number should be the same as those in the window on the back of your 2500R. The last 4 digits on the screen are for Program Distributor use. Write *all* 12 numbers in the front of this Manual.
   - 3b. Your TV should also show 2 signal strength numbers. For optimum system performance, both numbers should be between 46 and 50. For example, 48/48 is good, but 43/41 is not. Maximum strength is 50. Dish alignment and weather conditions can affect the VideoCipher II signal strength.
4. Call the VideoCipher II service that you want to subscribe to. They will ask for your Authorization Number and other billing information.
5. Leave the 2500R tuned to a VideoCipher II channel until you receive authorization. This may take a few minutes or longer, depending on the service.

Video Fine Tuning Adjustment

Fine tuning is usually not needed for C-band satellites, since they all use a standard channel numbering and frequency plan. However, you may be able to improve the picture quality on weak signals by adjusting the Fine Tuning. Fine tuning may be necessary for Ku-band satellites.

You have two options for fine tuning the video.

AFC OFF

With [AFC] OFF, you can alter the picture to suit your own preference, and the tuning that you select will be stored for that channel in the 2500R memory.

Use the [Fine Tune ▲ ▼] keys to adjust the picture.

Using the 2500R with the [AFC] OFF will allow faster channel changes and also allows you to customize the tuning for each channel.

If you want to return to the factory preset for all channels, press both [FINE TUNE ▲ ▼] keys at the same time for 3 seconds with the [AFC] OFF.

AFC ON

With [AFC] ON, the 2500R will automatically compensate for any channel drift according to factory preset guidelines.

Ku-Band Video Fine Tuning

Since Ku-band channel frequencies have not been standardized, we suggest that you allow the 2500R to fine tune your Ku band channels with [AFC] ON. If you are not satisfied with the picture, set [AFC] OFF. Use the [FINE TUNE ▲ ▼] keys to adjust the picture.

ACTION	DISPLAY
[AFC] OFF	LED OFF
[FINE TUNE ▲ ▼]	Best Picture

A Note About Channel and Audio Tuning

Your 2500R can store up to 21 C-band and 32 Ku-band satellites in memory. However, you cannot store channel-specific information (such as subcarrier audio selection) for each channel on every satellite. This would require a huge system memory. The system can store one set of parameters for each unique channel number (1,2,19,22 etc.) in C-band and another set of parameters for each unique channel number in Ku-band.

When you change a parameter for a channel, it will be changed for *all* of the satellites in that band. For example, if you change the tuning for Channel 19 in C-band, *all* C-band channel 19s will use this new setting.

However, the 2500R has a Favorite Channel memory that can store audio and other channel specific information for up to 10 entries. You could, for example, store a C-band channel 19 on F4 and a C-band channel 19 on G1 as separate Favorite Channel entries.

Favorite channel, audio subcarrier tuning, and other daily use activities are covered in the next section of the manual.

Daily Use of Your Receiver

Using Your Receiver
Your receiver has been installed and you've programmed satellites into the memory. You have probably received authorization for VideoCipher II programming. It's time to sit back, pick up your remote control, and enjoy the world of satellite TV.

In these next few pages, we'll review the procedures that you'll follow for everyday viewing.

Power
We recommend that you leave your 2500R plugged in with the STDBY LED ON at all times. The STDBY LED indicates that the 2500R can receive authorization messages from VideoCipher II channel services.

If 2500R is Unplugged
If your 2500R is unplugged for a period of time, you may need to get re-authorized by your VideoCipher II services. A lack of power may also cause condensation in the LNB, which can shorten LNB life.

Channel Selection
Channel selection begins with satellite selection. You can move directly to a Favorite Channel using the Remote Control keypad, or you can switch to a specific satellite and then tune the channel that you want to watch.

You can access all normal viewing functions through the Remote Control.

Set [LOCK] ON *(LED lit)* for all channel selections and tuning activities.

Storing a Favorite Channel

1. Locate the channel that you want to watch by selecting the satellite, tuning the channel and tuning the audio.

   If the satellite initials don't appear in the display, you have not programmed it into the 2500R. The satellite location must be programmed and stored in order for it to be entered as a Favorite Channel.
2. Press and hold [FAV] for 3 seconds, until [S –] appears in the display.
3. When the satellite display reads [S –], press a number key. This number will now appear in the satellite display [S #].
3. The display will blink twice, and the new channel will be stored in memory.
4. Write the satellite and channel on the back of the Remote Control.

Recalling Favorite Channels

1. Press [FAV] [#] for the desired channel.
2. The 2500R will automatically position the dish on the satellite and select the proper channel, skew, and subcarrier audio tuning.

Changing a Favorite Channel
To change a Favorite Channel setting, just repeat the steps for Setting a Favorite Channel. Your new entry will replace the old one in the Favorite Channel memory.

ACTION	DISPLAY
[LOCK] ON	LED ON
[NEXT SAT]	Satellite Name
[CHANNEL ▼ ▲]	Channel Number
Tune Audio	
Fine Tune Video	
[FAV] 3 seconds	[FV] Then [S-]
Number Key [#]	[S#]
	2 Blinks
	Satellite Name
[LOCK] ON	LED ON
[FAV] [#]	[FV]
	Satellite Name
	Channel Number

RECALLING SATELLITES: Not Favorite Channel

You can view programming on any satellite as long as you store that satellite's location in memory.

See Programming Your Satellites (page 12) for details on programming satellites into memory.

Satellite Recall

1. If you are using the Remote Control, press [NEXT SAT] until you see the initials of the satellite that you want to watch.
   1a. If you are using the front panel keys on the 2500R, press the [EAST] or [WEST] keys until you see the initials of the satellite that you want to watch.

Channel Tuning

1. To select a specific channel on the satellite, use the [CHANNEL ▲ ▼] keys.
2. Fine tune the channel (if necessary) using the [FINE TUNE ▲ ▼] keys.

As long as you are in [LOCK] ON mode with [AFC] OFF, the 2500R will store any fine tuning changes that you make for that channel.

Parental Supervision

Your 2500R provides you with two methods for locking channels and restricting viewing.

For VideoCipher® II Channels

The Rating Ceiling method applies only to VideoCipher II channels. You can prevent viewing all rated VideoCipher II channel programs above the level that you set.

For example, if you set the level at PG-13, your system will allow only G, PG and PG-13 rated programs. Both R and X-rated programs will be locked out.

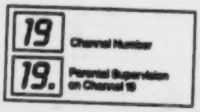
This method is described on page 21.

For Other Channels and VideoCipher® II Channels

The second method (Parental Supervision) provides complete channel lockout, and may be used on both VideoCipher II and unscrambled channels.

This method requires you to completely lock out access to a channel. *This method also locks the dish and prevents any satellite or channel reprogramming.*

1. Set [LOCK] ON.
2. Tune to the channel that you want to restrict.
3. Press the [PS] key for 3 seconds. The display will blink and a [•] will appear on the channel number.
4. Switch to a different channel on this satellite.



NOTE: This channel can still be selected by entering the channel number through the Direct Access number pad on the Remote Control. To completely restrict viewing of this channel, you will need to take the Remote Control with you.

Changing Parental Supervision

It's simple to remove the restriction from a locked channel.

1. Using the Remote Control number key pad, enter the channel number.
2. Press and hold the [PS] key until the channel display blinks once and the [•] disappears.

Audio Tuning

Check your program guide to see which subcarrier frequency and format the channel is using. Most unscrambled channels use the 6.8 MHz subcarrier to broadcast a mono audio signal. If you don't find audio on 6.8MHz, the channel may be using another mono frequency (5.0-8.5 MHz), Discrete Stereo or Matrix Stereo. Your 2500R can tune any of these signals and store them in memory for automatic recall.

> **Remember:** To hear the stereo mode on a channel, your 2500R must be attached to a stereo amplifier or receiver.

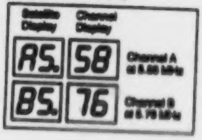
Use the [MODE] key to select the audio format. Check the front panel LEDs to confirm your selection.

For VideoCipher II channels, you will not normally need to tune the audio. Two digital audio channels are combined with the video signal. However, you can select subcarrier audio for these channels by pressing the [SUB AUDIO] key.

While you are pressing the keys to tune the audio, the Channel and Satellite displays will show the audio subcarrier frequency.

The Satellite display shows which channel you are tuning (A or B) and the first number in the audio frequency. The Channel display shows the last two numbers of the frequency. The 2500R has 10 KHz resolution on audio subcarriers.

Audio Subcarrier Display



Daily Use of Your Receiver

Tuning Discrete Stereo

When you select DISC, the 2500R will automatically select a NARROW bandwidth. You can override this with the [AUDIO BW] key if it improves your reception.

1. Press the [MODE] key to set the 2500R to DISC.
2. Turn the BALANCE control on your stereo to the LEFT channel.
   - 2a. Use the [AUDIO A ▲ ▼] keys on the Remote Control to tune the left channel.
3. Turn your stereo BALANCE control to the RIGHT channel.
   - 3a. Use the [AUDIO B ▲ ▼] keys on the Remote Control to tune the right channel.
4. Set the BALANCE control on your stereo back to the center.

Tuning Matrix Stereo

Matrix stereo usually sounds best when the 2500R is placed in the WIDE [AUDIO BW] mode. If you cannot get good reception on WIDE, switch to narrow.

1. Press the [MODE] key to set the 2500R to MTRX.
2. Follow steps 2-4 as described for Stereo Discrete.

Tuning Mono

1. Press the [MODE] key to set the 2500R to MONO.
2. Use the [AUDIO A ▲ ▼] keys on the Remote Control to tune the audio channel.
3. The Channel and Satellite Displays will show the frequency.
4. Change the Audio Bandwidth using the [AUDIO BW] key if it improves the sound quality.

ACTION	DISPLAY
[illegible] ON	LED ON
[MODE]	[DISC]
Stereo Balance Left	
[AUDIO A▲▼]	e.g., A5.58
Stereo Balance Right	
[AUDIO B▲▼]	e.g., B5.78
Stereo Balance Center	

VideoCipher® II Programs

Once you have received authorization, you can tune and view a VideoCipher II channel just as you would an unscrambled channel. However, VideoCipher II channels provide additional features and services. Here's how to use them.

The following features can be used only on VideoCipher II channels.

[VIEW]

Press the [VIEW] key to see information about the current program being broadcast on the channel. This will include program title, running time and rating.

After 5 seconds, this program information will disappear from the screen.

The [VIEW] key is also used when you want to exit from a VideoCipher II setup routine without completing it.

[HELP]

Press [HELP] when you are using VideoCipher II features if you need an explanation of the procedure. You will be able to read HELP messages on the TV. If you still cannot understand the procedure, press [VIEW] and consult the Manual.

[SETUP]

The [SETUP] key is used with the number keys to customize your VideoCipher II features.

If you press [SETUP], you will see the following menu on your TV:

1. Installation
2. Unit Settings
3. Rating Ceiling
4. Rating Password

You can choose one of these VideoCipher II setup activities by pressing the correct choice.

1. Installation

Press [SET UP] [1] *to see your Authorization Number* and Signal Strength displayed on the screen. Your program supplier will need these numbers to authorize you for VideoCipher II program reception.

2. Unit Settings

Personal Messages

VideoCipher II program suppliers may send you messages about your service subscription. These may concern your account balance, new services, or other information. Messages can be read on your TV.

1. A flashing asterisk [•] will appear on the screen to inform you that a message is stored for you.
2. To read the message, press [MESSAGE].

You can set your system so that the [•] does not show on the screen.

1. Press [SETUP] [2].
2. The display will read: MESSAGE PROMPT ENABLED (ON) or MESSAGE PROMPT DISABLED (OFF).
3. Press [2] to switch back and forth and set the prompt ON or OFF.

We recommend that you turn the (•) prompt OFF when you are going to record a VideoCipher II program on your VCR. However, if you turn the prompt OFF, you may not know when a message has been sent to your receiver. The best approach is to leave it ON and turn it OFF when you record.

Second Language Audio
Some VideoCipher II channels offer second languages on their programs.

1. To listen to an ALTERNATE language, press [SETUP] [2].
2. Press [1] to switch between PRIMARY (usually English) and ALTERNATE (the second language).

3. Rating Ceilings

1. Press [SETUP] [3].
2. Enter your password if one has been set. If no password has been set, proceed to the next step.
3. Use the [◄ ►] keys to change the rating ceiling.

4. Rating Passwords

Passwords are used to control access to the rating ceiling. VideoCipher II ratings are based on standard motion picture rating guidelines.

We suggest that you pick a number that is easy to remember: your zip code, date of birth, phone number, street address, etc. *If you forget your password,* you will need to contact your program distributor to have it reprogrammed.

To set or change a password:

1. Press [SETUP] [4].
   - 1a. If you don't need password control, press [ENTER] twice when the screen prompts you to enter a new password. This ends the procedure.
2. Key in your new password (up to 8 digits) and press [ENTER].
   - 2a. If the system has a password stored, you will need to key it in before the system will accept a new one.
3. Key in the new password, and press [ENTER].
4. The screen will ask you to enter the new password a second time to confirm it. The screen will tell you that the password has been changed and then return you to the main SETUP menu.

Program Messages
VideoCipher II program suppliers offer a wide variety of services, some of which may require pay per view or other restrictions on viewing. If this occurs, you will see one of the following messages on your TV screen when you are tuned to that channel.

No Subscription
This message indicates that your 2500R has not been authorized to receive this channel. Contact your program supplier to receive authorization.

Blackout
This message indicates that a program is not available in your geographic area.

Program Locked Out
This message will appear if the program currently being broadcast on that channel exceeds the rating ceiling that you have set. You can change the rating ceiling if you want to view the program. (See Rating Ceilings and Rating Passwords).

Next Available Program
This VideoCipher II feature allows you to quickly check upcoming programs.

1. Tune to the VideoCipher II channel that you want to watch.
2. Press [NEXT PRG].
3. You will see a message listing the title, rating, start time and other information about the next program that will be shown on that channel.
4. You may also see one of the other VideoCipher II service messages (No Subscription, Blackout, etc.)

Text Services
Some VideoCipher II channels may broadcast news bulletins, program information and other text over the channel.

To view these services:

1. Tune to a VideoCipher II channel.
2. Press [TEXT].
3. Use the [◄ ►] keys to move back and forth within the text.
4. You can move to a specific page by keying in a 3-digit page number. For example, page 6 would be 006. It will usually take several seconds before the page is displayed. If you request a page that is not in the file (for example page 006 in a 5-page file), the screen will stay as it is.

VCR Use
Your 2500R will allow you to record a satellite program while you are watching a VHF program. If you use A/B splitters, you can set your system to also record VHF while you watch satellite programming. Consult your video dealer or your VCR manual for other wiring options.

***Remember:** If you are recording a satellite program, you should not use the Remote Control to change the volume; it will affect the recording volume. Leave the 2500R volume set at maximum.*

When You Are Not Watching
If you subscribe to a VideoCipher II service, we recommend that you position your dish on a satellite with a VideoCipher II channel when you are not watching satellite TV. Your 2500R will automatically tune to a VideoCipher II channel to receive Authorization updates when the power is turned off and the receiver is in the STANDBY mode (LED ON).

Installing Your 2500R

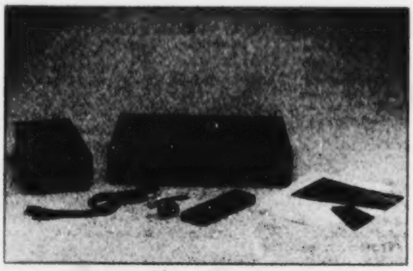
Complete the Pre-Installation Checklist.

The Pre-Installation Checklist items can affect the performance of the 2500R.

Please review the Checklist to make sure that you have completed each item that applies to the type of system that you are installing.

Preparing Your System

A satellite TV system has many sophisticated electronic and mechanical components in addition to the 2500R Receiver. Unless these components are installed and operating correctly, you will not get the best possible reception from the system.



SYSTEM COMPONENTS

Check that all of the following items have been packed with the 2500R. If any of the items are missing or appear damaged, contact your dealer.

70 MHz Loop Cable

A single 6" RF-type cable is packed with the receiver for 70MHz loop-through. *This cable must be connected if no external TI Filter is being used.*

Remote Control Unit

The Remote Control can be used to control most 2500R functions.

Manual

This Manual contains detailed installation and operating instructions.

User's Guide

Keep this Guide near your 2500R. It contains the information that you'll need for daily use.

Warranty Card

Please return the Warranty Card to General Instrument after you complete the installation.

Antenna Positioner Power Supply and Cable (Optional)

The optional power supply controls the position of the dish. The 6-foot DIN cable packed with the Antenna Positioner Power Supply is used to connect it to your 2500R.

Screwdriver

The small screwdriver can be used to make connections on the 2500R Terminal Block.

How To Use This Checklist

A satellite TV system has many sophisticated electronic and mechanical components in addition to the 2500R Receiver. Unless these components are installed and operating correctly, you will not get the best possible reception from the system.

Please keep this Checklist available for reference and provide it to any installer or service technician who is working on your satellite system.

1. Read "**Important Safeguards**" on the separate enclosed sheet.
2. Complete sections 1 and 2 *before* installing the 2500R.
3. Complete sections 3, 4 and 5 *before* turning the power ON.

1. Electrical

__ Unit is disconnected
__ Unit is not located near water or moisture.
__ Unit will be attached to a properly grounded receptacle.
__ AC plug will be held securely in receptacle.
__ Power cord is protected from pinching.
__ Circuit will not be overloaded.
__ Outdoor antenna is properly grounded.
__ Outdoor antenna is away from power lines.

2. Location

__ Unit will be adequately ventilated.
__ Unit will not be installed near heat source.
__ Unit will be on a stable surface.

3. Wiring

__ All wiring corresponds to manufacturer's recommendations or equivalent.
__ Long cable runs have been fitted with line amplifiers.
__ RG-6/RG-59 connectors have had their center wires trimmed.
__ All Splitters will pass DC voltage up to 20 volts.
__ Actuator is wired according to diagrams.
__ All F and N connectors have been weather proofed with coax seal.

4. Equipment

__ LNA/BDC or LNB meets minimum gain guidelines.

5. Dish Adjustments

__ Polar axis has been aligned.
__ Elevation has been set.
__ Declination has been adjusted.

Installing Your 2500R

Dish Adjustments
Your dish antenna must be able to track the satellites in the orbital arc with no obstructions. In addition, the dish must track the *proper* arc or your reception will be degraded.

Your antenna should be adjusted according to the antenna manufacturer's instructions.

Replacement Systems
If you are *replacing* an existing receiver with the 2500R, *do not disconnect your old system yet.*

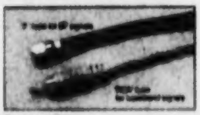
We suggest that you move the cables from the old system to the 2500R cable by cable. If you don't have sufficient cable length to place your 2500R on the floor near your old system while you are transferring wires, label each wire that is attached to your old system. Then, remove your old system and attach the connectors to the 2500R.

New Systems
If this is a *new* system installation, you may want to set the 2500R up at the dish. This allows you to see the effects of each dish or receiver adjustment immediately.

Wiring
Most satellite TV system wiring has standard color coding. Check the manuals for each device in your system to verify the proper coding for each wire. Wiring connections are listed on the foldout at the back of this manual.

DC Pass Splitters
All splitters used in your installation (for dual band, dual feed or multiple receivers) must be capable of passing a 1500 MHz signal and DC voltage even if the master receiver is turned OFF. If the splitters do not pass DC, you may lose video, audio, descrambler authorization or be unable to select different polarities on second receivers.

Cabling
Several types of cables can be used in a standard installation. To get the best performance from your system, it is important to use the cable recommended in the chart. All system wiring should meet UL standards.



Connector Types

Coaxial cable can lose 10 dB or more of signal for every 100 foot of length (dB is a measure of signal strength). This loss is called attenuation. If there is too much loss, you may have to install line amplifiers. All coaxial cable used in your 2500R installation should be capable of a band pass of 950-1450 MHz as well as passing DC voltage up to 20 volts.

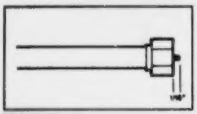
We recommend that you use wiring as large or larger than specified on this chart or the separate insert on Important Safeguards.

Cable Run Loss

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	*	*	*
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	*	*
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	*

* Indicates next larger size cable or additional amplifiers should be inserted.

RG-6 and RG-59 Cable
When using RG-6 or RG-59 cable, avoid bending the center wire. To minimize damage, we suggest that you trim the center wire back so that it extends no more than 1/16" beyond the cable end connector.



RF Cable Trimming

LNA/Block DownConverter, LNC or LNB
Your 2500R *cannot* function with a Low Noise Amplifier (LNA) alone. If you are using an LNA, it will need a minimum gain of 50 dB and a *Block DownConverter* with a minimum gain of 20 dB.

If you are installing your 2500R with a Low Noise Block DownConverter (LNB), it must have a minimum gain of 55 dB.

Signal Strength and Line Amplifiers

If your cable runs are over 150 feet, or if terrain or other factors affect your signal strength, you may need to install a line amplifier.

Check the [SIGNAL STRENGTH] LEDs on the 2500R. If no LEDs are lit, install a 950-1450 MHz 20 dB Line Amplifier on the IF IN line to the 2500R. If one LED is lit, a line amplifier may improve your reception.

These tests should be run after your system is installed.

Installation Options

Your 2500R can be installed with single or multiple receivers, single or dual feeds, and with single or dual band reception. Refer to these diagrams to determine the best way to meet your personal viewing requirements.

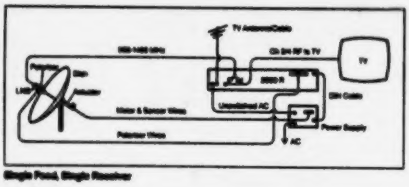
Make sure that you have the required parts, connectors and cables for the type of installation that you will be doing *before* you begin. Specific wiring diagrams and connection charts are provided on a foldout at the back of this manual.

Follow the *top* diagram when you are installing a standard 2500R setup with a single LNB (or LNA/BDC) and a single receiver.

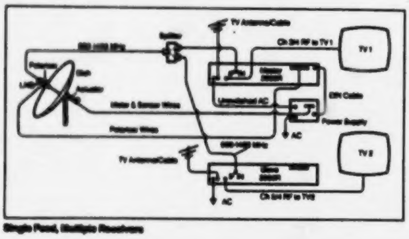
Follow the *center* diagram when you are installing multiple 2500Rs with a single LNB (or LNA/BDC). The slave (second) receiver will only be able to view 12 channels, since the master receiver will control the polarization.

Follow the *bottom* diagram when you are installing single or multiple 2500Rs with dual LNBs (or LNA/BDCs). In dual feed systems, the slave receiver can tune all 24 channels.

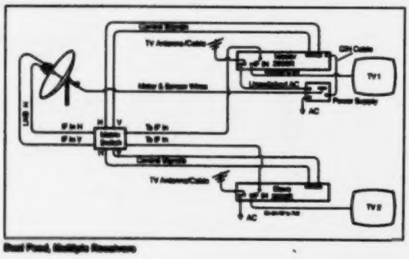
The 2500R can be used in dual feed/dual band/multiple receiver setups. This installation is complex, and we recommend that an experienced installer complete the setup.


TV Antenna/Cable
950-1450 MHz
Ch 3/4 RF to TV
TV
2500 R
Polarizer
LNB
Motor & Sensor Wires
Unswitched AC
Power Supply
AC
Polarizer Wires

Single Feed, Single Receiver


TV Antenna/Cable
Splitter
950-1450 MHz
Ch 3/4 RF to TV 1
TV 1
Master 2500R
Motor & Sensor Wires
Unswitched AC
Power Supply
AC
Polarizer Wires
TV Antenna/Cable
Slave 2500R
TV 2
AC
Ch 3/4 RF to TV2

Single Feed, Multiple Receivers


Control Signals
TV Antenna/Cable
Master 2500R
TV 1
Motor & Sensor Wires
Unswitched AC
Power Supply
AC
LNB H
Matrix Switch
Control Signals
TV Antenna/Cable
Slave 2500R
TV 2
AC

Dual Feed, Multiple Receivers

Installing Your 2500R

Receiver Connections

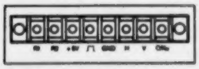
1. Check that no power is on in the system. No LEDs should be lit.
2. Connect your VHF input to the VHF IN FROM ANT connector.

   Your VHF input to the 2500R should be 75 ohm. If you have 300 ohm output from your antenna, you will need to purchase a 300-75 ohm adapter.

   There is no connection for a UHF antenna on the 2500R. If you want to watch UHF programming, you will need to connect the UHF antenna directly to your TV set.
3. If you are using a standard TV set, attach it to the VHF OUT TO TV connector on the 2500R.

   If you are using a TV monitor or VCR, connect the input to your monitor to the VIDEO OUT connector on the 2500R. This is an RCA-type connector. Attach the R(Right) and L(Left) audio connectors to your monitor or to a separate stereo receiver.
4. Connect the polarizer wires to the terminal block as follows:

   GND Black ground wire.
   PULSE White pulse wire.
   +5V Red 5-volt wire.



2500R Receiver Terminal Block

5. Attach the output cable from your LNB to the 950-1450 MHz IF IN connector on the 2500R.

   The 950-1450 MHz IF IN connector is also used for installation of the General Instrument Matrix Switch or standard A/B splitters for dual feed and dual receiver installations. Check the appropriate installation diagram (pages 31-33) for details.
6. We recommend that you set up your system without an external TI filter, and add one later if you need it for specific channels. The built-in TI filter will be adequate for most installations.

   If you need to use an external TI Filter, attach it to the IN-70MHz-OUT connectors on the 2500R. If you are not using an external TI Filter, make sure that you attach the 6-inch 70 MHz cable (supplied) to these connectors. *Both connectors on this loop through circuit must be attached.*

   If you are using coaxial switches for dual feed or dual band installations, attach them to the H/V and C/Ku connectors on the terminal block.

   If you are using a Remote Eye, connect these cables to the R1 and R2 connectors on the 2500R.
7. Check all your connections.

   If you are using the optional Antenna Positioner Power Supply, follow the directions in the shaded box to connect it to your actuator.

8. Connect your 2500R to AC power.

8A. If you are using the optional Antenna Positioner Power Supply, plug it into an unswitched AC wall outlet.

8B. If you are not using the Antenna Positioner Power Supply, plug the 2500R into the wall outlet. the [STDBY] LED will light.

When the receiver is in STANDBY mode ([STDBY] LED lit), it can receive VideoCipher II authorization messages and will also supply constant power to the LNB.

9. Turn the 2500R [POWER] on. Several of the front panel LEDs and displays will light.

   The Satellite Display should show [o –].

   The Channel Display should show [1].

10. After you complete the installation of the 2500R, verify that your dish is moving in the right direction when you press the [EAST] and [WEST] keys. If not, disconnect the AC Power, reverse the M1 and M2 leads on the Antenna Positioner Power Supply and reconnect the AC power.

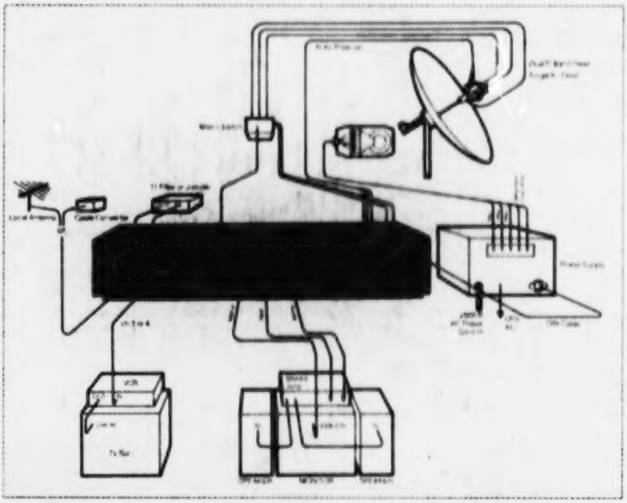
11. If the dish does not move when you press [EAST] or [WEST], use the Master Reset procedure. See page 14.

Next Steps

Once you have wired the receiver and checked for proper dish movement, you're ready to begin programming your satellites.

Turn to page 10 and begin.

Installing Your 2500R



Accessory Connections
Attach VCRs, Cable converters, VHF and UHF antennas to the 2500R according to this diagram.

VCR Connection
Connect your VCR as shown. When your VCR is OFF, the satellite signal will loop through the VCR and go to your TV. When the 2500R is in TV or STANDBY mode, the VHF/Cable signal will go to the VCR *and* your TV.

You can also connect your VCR by using the baseband (RCA-type) Video and Audio R-L outputs. This method allows you to videotape satellite programs while watching local VHF or Cable channels.

VCR Audio Level
If you use the Remote Control to change the satellite program audio volume, you will also change the audio volume output to your VCR (if you are taping the same program that you are watching).

When you are taping a program, use the volume control on your TV to change the volume. In order to optimize your audio signal, set the volume of the 2500R to its maximum.

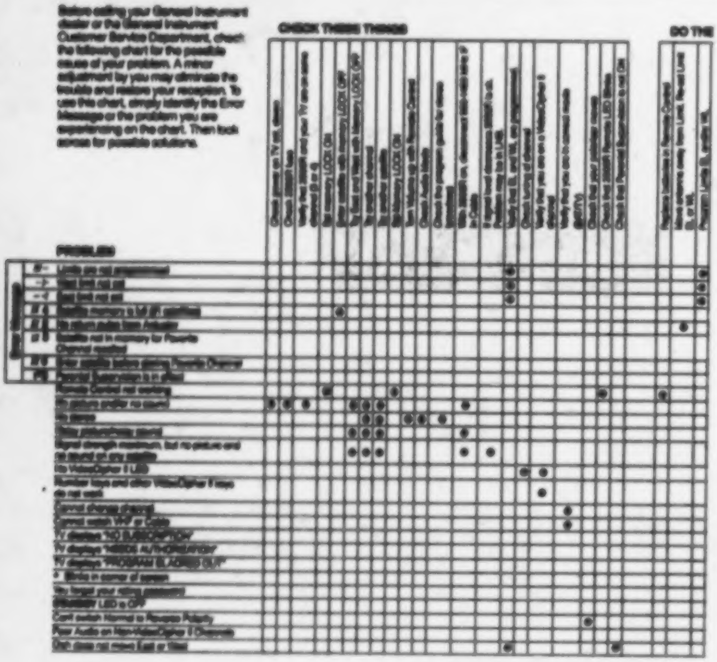
VHF/Cable Antenna Connections
Your 2500R has a connector for attaching an outside VHF antenna or cable system input. If you are using a VCR, you can add external A/B switches to place these antenna inputs at other points in your system.

Check your VCR manual or consult your local video dealer for installation options.

Maintaining Your 2500R
The only maintenance that your 2500R should require is an occasional dusting.

Troubleshooting guide

Before calling your General Instrument dealer or the General Instrument Customer Service Department, check the following chart for the possible cause of your problem. A minor adjustment by you may eliminate the trouble and restore your reception. To use this chart, simply identify the Error Message or the problem you are experiencing on the chart. Then look across for possible solutions.



CHECK THESE THINGS

DO THE

PROBLEM

Limits are not programmed
East limit not set
West limit not set
Satellite memory is full (81 satellites)
No return pulse from Actuator
Satellite not in memory for Favorite Channel selection
Enter satellite before storing Favorite Channel
Parental Supervision is in effect
Remote Control not working
No picture and/or no sound
No stereo
Noisy picture/noisy sound
Signal strength maximum, but no picture and no sound on any satellite
No VideoCipher II LED
Number keys and other VideoCipher II keys do not work
Cannot change channel
Cannot switch VHF or Cable
TV displays "NO SUBSCRIPTION"
TV displays "NEEDS AUTHORIZATION"
TV displays "PROGRAM BLACKED OUT"
* Blinks in corner of screen
You forgot your rating password
STANDBY LED is OFF
Can't switch Normal to Reverse Polarity
Poor Audio on Non-VideoCipher II Channels
Dish does not move East or West

[illegible]

Use Satellite Re-Align	Check connections between 2500R, TV set, stereo, VCR	Check connections between 2500R, LNB, Polarizer, any coax relays	Check antenna installation and actuator	Check for excessive Terrestrial Interference in your area	Replace LNB	Program the satellite	Program the Favorite Channel Satellite	Re-align Antenna	Call your program supplier to cancel old password	You have a message. See page 20	See page 21	LNB fuse is blown. Call for service	Adjust polarizer	Change audio BW wide/narrow	Turn Parental Supervision OFF	Do Master Reset (page 14)
			●													
							●									
						●										
	●	●		●												
	●															
●	●	●		●												
					●											
								●								
											●					
											●					
											●					
										●						
									●							
												●				
													●			
														●		
															●	●

Before You Call

If you can't solve your problem with the Troubleshooting Guide, try one more thing before you call.

1. Pull the Power Plug from the AC receptacle.
2. Wait 5 minutes.
3. Plug the 2500R back in and try your procedure again.

Getting Help

If you still can't correct an operating problem, contact your dealer. If your dealer is unable to solve your problem, contact General Instrument Customer Service. *Please don't open the cabinet and attempt to repair the unit, as this will void your warranty.*

Unplug the receiver and refer servicing to qualified service personnel when:

- The power supply or plug is damaged.
- The receiver has been exposed to rain or water.
- A solid object or liquid has fallen into the receiver.
- The receiver exhibits a distinct change in performance or does not operate normally.
- The receiver has been dropped or the cabinet has been damaged.

To Service This Receiver

1. Customer Service may be reached at 1-800-344-6754 or 1-704-327-8021, Monday through Friday, 8:30 a.m.-6:00 p.m. Eastern Time.
2. Do not ship your unit to General Instrument until you are asked to do so. You will be given a Return Material Authorization (RMA) number that must be sent with your unit. We suggest you attach a piece of masking tape to the bottom of the unit and write the RMA number on it. Use this RMA number in all correspondence with General Instrument about your repair.
3. Label each wire and connector *before* disconnecting the receiver.
4. Ship the unit to General Instrument in its original packing box or an equivalent padded container. Prepay the freight to send the unit to General Instrument. We pay the freight to return it to you. We suggest that you insure it for its full value.

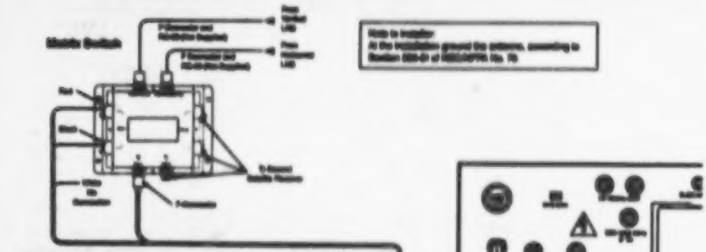
Replacement Parts

When replacement parts are required, be sure the service technician has used replacement parts specified by the manufacturer or those which have the same characteristics as the original part. Unauthorized substitutions may result in fire, electrical shock or other hazards.

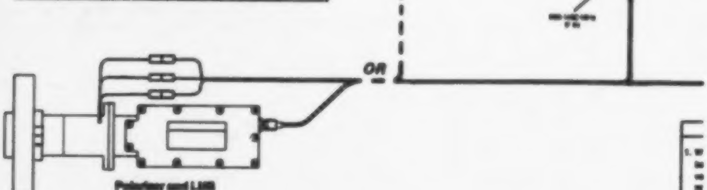
Safety Check

After completing any service or repairs to this receiver, ask the service technician to perform safety checks to determine that the receiver is in proper operating condition.

Wiring Diagrams



[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

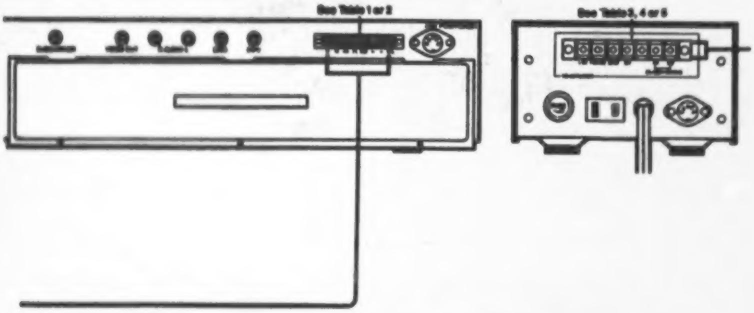


Polarizer and LNB

[illegible]	[illegible]	[illegible]	LNB
[illegible]	[illegible]	[illegible]	—
[illegible]	[illegible]	[illegible]	—
[illegible]	[illegible]	[illegible]	—
[illegible]	[illegible]	—	[illegible]

The circuit between M1 and M2 is capable of producing up to 36 volts and may result in severe electrical shock. The wiring should be installed by a qualified electrician and should conform to all Local codes.

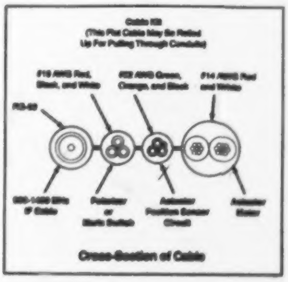
The 2800R must be unplugged during wiring and troubleshooting, or severe electrical shock may result.


See Table 1 or 2
See Table 3, 4 or 5

MATRIX SWITCH NOTES

1. When Red (V) is +, TV is being received from vertical LNB. When Black (H) is +, TV is being received from horizontal LNB.
2. The Matrix Switch is designed for indoor use only.

Note to Satellite System Installer:
Please pay close attention to Article 810-20 of the National Electrical Code that provides guidelines for proper installation of antenna discharge units. In particular, this article specifies that each conductor of a "lead-in" from an outdoor antenna shall be provided with a listed antenna discharge unit except where the lead-in conductors are enclosed in a continuous metallic shield that is effectively grounded.


Cable Kit
(This Flat Cable May Be Rolled
Up For Pulling Through Conduits)
#18 AWG Red, Black, and White
#22 AWG Green, Orange, and Black
#14 AWG Red and White
RG-59
950-1450 MHz IF Cable
Polarizer or Matrix Switch
Actuator Position Sensor (Count)
Actuator Motor

Cross-Section of Cable

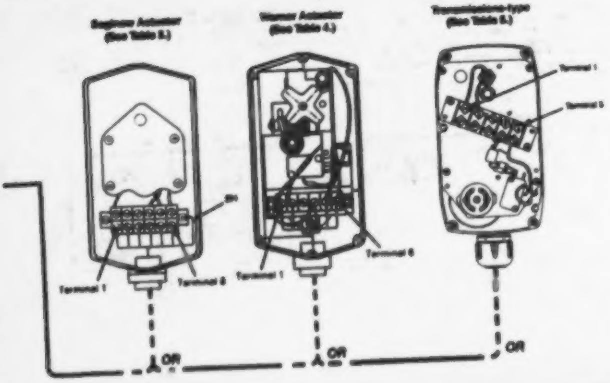

[illegible] Actuator
(See Table 3.)
[illegible] Actuator
(See Table 4.)
Transmission-type
(See Table 5.)
Sh
Terminal 1
Terminal 6
Terminal 1
Terminal 6
Terminal 1
Terminal 5
OR
OR
OR

TABLE 3.	[illegible] ACTUATOR (ACTUATOR WITH [illegible] POSITION SENSOR)		
[illegible]	CABLE OR WIRE (COLOR AND GAUGE)	ACTUATOR CONNECTION (EASTERN)	ACTUATOR CONNECTION (WESTERN)
+5	Orange, 22 AWG	Terminal 4	Terminal 4
Pulse	Green, 22 AWG	Terminal 5	Terminal 5
⏚	Black, 22 AWG	Terminal 6	Terminal 6
Sh	Uninsulated Drain Wire	As shown	As shown
S1	Red, 14 AWG	Terminal 2	Terminal 1
S2	White, 14 AWG	Terminal 1	Terminal 2

TABLE 4.	[illegible] ACTUATOR (ACTUATOR WITH REED SWITCH POSITION SENSOR)		
[illegible]	CABLE OR WIRE (COLOR AND GAUGE)	ACTUATOR CONNECTION (EASTERN)	ACTUATOR CONNECTION (WESTERN)
+5	Orange, 22 AWG	No Connection	No Connection
Pulse	Green, 22 AWG	Terminal 1	Terminal 1
⏚	Black, 22 AWG	Terminal 2	Terminal 2
Sh	Uninsulated Drain Wire	Terminal 4	Terminal 4
S1	Red, 14 AWG	Terminal 6	Terminal 5
S2	White, 14 AWG	Terminal 5	Terminal 6

TABLE 5.	TO TRANSMISSION-TYPE DRIVE (DRIVE WITH REED SWITCH POSITION SENSOR)		
[illegible]	CABLE OR WIRE (COLOR AND GAUGE)	ACTUATOR CONNECTION (EASTERN)	ACTUATOR CONNECTION (WESTERN)
+5	No Connection	No Connection	No Connection
Pulse	Green, 22 AWG	Terminal 1	Terminal 1
⏚	Black, 22 AWG	Terminal 2	Terminal 2
Sh	Uninsulated Drain Wire	Terminal 3	Terminal 3
S1	White, 14 AWG	Terminal 4	Terminal 5
S2	Red, 14 AWG	Terminal 5	Terminal 4

NOTE: Eastern refers to the US east of 100° west longitude.
Western refers to the US west of 100° west longitude.

Specifications

IF

Input Frequency	950 to 1450 MHz
Input Impedance	75 ohm
Input Level	−60 to −20 dBm
Noise Figure	15dB maximum
Number of Channels	24 channels in C-band 32 channels in Ku-band
Second IF Frequency	70 MHz and 403 MHz
Bandwidth	27MHz at 3dB point
Threshold (static)	7.0 dB C/N maximum
Local Oscillator Radiation	Less than -60 dBm
AFC Characteristics	Pull-in and tracking range of ±5 MHz
Demodulator	Injection Locked Demodulator

Video

De-emphasis	525 line CCIR Rec. 405-1
Frequency Response	10 Hz to 4.2 MHz at −3dB
DG and DP	10% and 5° maximum at 10 to 90 APL
Output Impedance	75 ohm
Clamping	Better than 40 dB
S/N	50 dB min weighted at 16dB C/N (10.7 MHz peak dev.)
Output Level	1Vp-p

VHF Output

Impedance	75 ohm
Channel	CH 3 or 4
Level	6.5 dBm

Audio

Subcarrier	5.0 to 8.5 MHz
Bandwidth	180 KHz narrow at −6 dB 280 KHz wide
Modes	Mono, Discrete, or Matrix Stereo
Frequency Response	±1.0 dB, 30 Hz to 15 KHz in VC mode ±2.0 dB, 30 Hz to 15 Hz in non-VC mode
De-emphasis	75 micro sec.
Harmonic Distortion	0.5% maximum in VC mode 1.5% maximum in non-VC mode
S/N	75 dB minimum in VC mode at 12 dB C/N 50 dB minimum in non-VC mode at 16dB C/N

Sub Carrier Output

Frequency Response	10 Hz to 8 MHz
Output Impedance	75 ohm
Output Level	1V p-p

Physical/Environmental

Temperature	0 to 40° C
Humidity	95% relative
Dimension	17 12" x 2.95" x 11.98"
Weight	15 lb. 12 oz
Power Input	115V ± 10% AC 50W Nominal

2. By Timothy A. Boggs

WARNER COMMUNICATIONS INC.

Timothy A. Boggs
Vice President — Public Affairs

July 7, 1988

Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. ~~Chairman~~: Bob

I have reviewed the July 6th Amendment in the Nature of a Substitute to H.R. 2848, the Satellite Home Viewer Copyright Act of 1988. As one who has actively worked on this legislative project with you and your counsel, I am pleased to inform you of our support for this substitute. I believe that this bill is in the interest of both Warner Bros., a major motion picture company, and Warner Cable Communications, our cable television division. Most importantly, the bill establishes a reasonable public policy to resolve several of the troublesome issues involved.

I look forward to working with you on unresolved matters as the bill moves forward.

Sincerely,

Tim Boggs
Timothy A. Boggs

cc: Members of the Subcommittee

1133 21st Street, N.W., Suite 400, Washington, D.C. [illegible] [illegible]
75 Rockefeller Plaza New York, New York 10019 212 484 8000

MOTION PICTURE ASSOCIATION
OF AMERICA, INC.
1600 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
(202) 293-1967

KATHY ZEBROWSKI
VICE PRESIDENT
FOR CONGRESSIONAL AFFAIRS
AND SPECIAL COUNSEL

August 12, 1988

The Honorable Robert Kastenmeier
2328 Rayburn House Office Building
Washington, DC. 20515

Dear Congressman Kastenmeier:

The Telecommunications Subcommittee staff recently requested MPAA's comments on H.R. 2848, the "Satellite Home Viewer Copyright Act of 1988". The attached letter is the MPAA response to that request.

We have not yet heard any specific plans for action on the bill by the Energy and Commerce Committee. If the MPAA is asked to present testimony, the Association's position will continue to be support for the bill and suggestions for certain changes.

Sincerely,

Kathy

cc: Mike Remington

KZ/sr
Enclosure

MOTION PICTURE ASSOCIATION
OF AMERICA, INC.
1600 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
(202) 293-1966

August 12, 1988

The Honorable Edward Markey
2133 Rayburn House Office Building
Washington, DC 20515-2107

Dear Congressman Markey:

This letter responds to a request from Larry Irving, Senior Counsel for the Subcommittee on Telecommunications and Finance, for information on the Motion Picture Association's specific concerns regarding H.R. 2848, the "Satellite Home Viewer Copyright Act of 1988," recently referred to the Energy and Commerce Committee.

MPAA generally supports H.R. 2848 as reported by the House Judiciary Committee. The bill eliminates certain ambiguities in the copyright law regarding the scrambling and distribution of satellite-delivered "superstation" signals to home satellite dish owners, and strikes a reasonable balance among the interests of all affected parties.

MPAA believes that a handful of additional changes would help to clarify the intent of the bill and would eliminate certain undesirable consequences:

1. MPAA believes that the bill should be expressly limited to distribution of C-band satellite retransmissions. When direct broadcast satellite service begins, it will be on Ku-band. Congress should not presuppose the needs of that medium, and should instead encourage DBS to acquire the programming it desires in the free marketplace, not pursuant to a statutory license.

2. MPAA encourages the restoration of a fair cap on the number of "superstations" qualifying for carriage under this bill. Before it was amended in full committee, the bill defined "superstations" [in §119 (d) (10)] as those secondarily transmitted for nationwide distribution prior to April 1, 1988, or those which are retransmitted to not less than 10 percent of all cable subscribers. Without some sort of cap, we are likely to see the proliferation of superstations. That is not consistent with the purpose of the bill: to facilitate a transition to a free marketplace. A fair cap should be reinserted in the bill.

contd.

3. MPAA believes that "distributors" of satellite-delivered superstations should not have a role in the negotiation of royalty rates for the 1992-94 period. The true stakeholders in such negotiations are copyright owners, whose works are being used, and satellite carriers, who are responsible for complying with the royalty and other requirements of the bill. Distributors have no direct stake in the setting of royalty rates (indeed, the rates they actually pay to satellite carriers will be determined by contract or tariff, not by these negotiations) nor can they be held liable under the bill for failure to remit royalties. Moreover, the class of distributors is potentially so large as to render negotiations unworkable. To make the bill more simple and more fair, all references to "distributors" should be stricken from §§119 (c) (2), (3) and (4) of the bill.

4. MPAA believes the directive to the FCC to examine the feasibility" of syndicated exclusivity rules for home satellite dishes should be clarified. The Commission, pursuant to Section 3 of the bill, must "determin[e] the feasibility" of imposing syndex rules, and "adopt[] such rules if [found] feasible." Congress should clarify that by "feasibility" it means "technological feasibility" -- i.e., can syndex be accomplished using current (or soon-to-be-available) satellite technology. No other factors should enter into the analysis of "feasibility." Also, should the Commission initially decline to adopt syndex rules, it should be directed to revisit the issue upon a new showing that syndex may be "feasible." Finally, the phrase "private viewing" in Section 3 should be changed to "private home viewing" to be consistent with the rest of the bill.

5. MPAA urges Congress to close the potential loophole created by the definition of "satellite carrier". Under §110 (d) (7), only those satellite carriers "that use[] the facilities of a domestic satellite service licensed by the Federal Communications Commission" appear to be responsible for complying with the requirements of the bill. Thus, it is conceivable that a carrier who chooses to retransmit signals via a Canadian or other geostationary satellite which casts a footprint over all or part of the U.S. could evade the bill's royalty and other obligations. This definition should be amended to cover carriers using satellites licensed by any government entity, domestic or foreign.

6. MPAA believes the Copyright Office should be given express authority to audit satellite carriers filing for statutory licenses. Absent audit authority, it will be extremely difficult to verify or challenge the subscriber counts and other

contd.

data submitted by satellite carriers. Section 119 (b) should be amended to require the Copyright Office to establish reasonable standards for auditing satellite carriers where good cause is shown.

Sincerely,

Kathy Zebrowski

cc: Larry Irving

KZ/sr

Satellite Broadcasting and Communications Association
of America

Officers
[illegible]

Directors
[illegible]

Staff
[illegible]

July 29, 1988

The Hon. Peter W. Rodino
Chairman
Committee on the Judiciary
2137 Rayburn HOB
Washington, D.C. 20515-6216

Re: H.R. 2848

Dear Mr. Chairman:

On July 7, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice unanimously voted out and recommended for approval by the full Judiciary Committee H.R. 2848, the Satellite Home Viewer Copyright Act of 1988, as amended. The SBCA supports passage of this important bill.

More than two million American households rely upon satellite television for the delivery of programming. It is vitally important to them and to the members of our association that the issue of whether or not independent and network superstations can be legally delivered to home satellite owners be resolved.

On behalf of the SBCA members, which includes all entities delivering superstation via satellite, I would respectfully urge that this legislation be brought before your Committee at the earliest possible date.

Thank you for attention and consideration.

Sincerely,

Mark C. Ellison
Vice President
Government Affairs
and General Counsel

cc: The Hon. Robert Kastenmeier

300 North Washington Street • Suite 208 • Alexandria, Virginia 22314
Phone (703) 549-6990 FAX (703) 549-7640

Satellite Broadcasting and Communications Association
of America

September 30, 1988

The Hon. Strom Thurmond
United States Senate
SR-218
Washington, D.C. 20510

Dear Senator:

The Satellite Home Viewer Act of 1988 (H.R. 2848) is now pending before the House with a floor vote expected on October 3 or 4, 1988. This bill accomplishes two very important objectives. First, it creates a mechanism whereby home satellite viewers will be assured of continued access to network and independent broadcast signals. Second, the severe problem of satellite signal theft is addressed through the inclusion of increased penalties under the Communications Act.

The importance and urgency of that legislation has increased dramatically in recent weeks due to a decision in the U.S. District Court in Atlanta. That case involved the retransmission, via satellite, of network affiliate signals to home satellite viewers. In it, the judge held that existing law does not permit such delivery and, hence, is an infringement of copyright.

There are more than two million households in this nation which cannot receive network programming from local affiliates. A large number of these Americans rely upon home satellite systems to receive that programming. All of the networks have announced plans to encrypt their feeds and backhauls using scrambling systems which are incompatible with the system used by satellite home viewers. If the decision of the Atlanta Court is upheld, millions of Americans stand to be deprived of access to network signals. (For your information, I have attached a state-by-state breakdown of home satellite households and superstation subscribers.)

H.R. 2848 resolves this problem and, further, answers any questions which may exist with respect to the home satellite delivery of independent superstations. By creating a limited compulsory license with a six year duration, home satellite viewers are assured of access to programming, while balancing the interests of copyright holders.

As noted above, this legislation would also have a significant impact in our industry's efforts to control the unlawful descrambling of satellite subscription television. This problem threatens the existence of our industry and the severe criminal and civil sanctions imposed by H.R. 2848 will provide an extremely valuable tool in our campaign to bring this problem under control.

I am enclosing for your reference a summary of the bill.

It should be noted that H.R. 2848 enjoys very broad support in the communications industry. The networks, the motion picture industry, the cable industry, and, of course the satellite television industry are unanimous in their support of this bill. Independent broadcasters, while not actively supporting the measure are, in their own words, "willing to live with it." I am unaware of any opposition to this bill.

After several very difficult years, it now appears that the home satellite television industry is on the verge of recovery. That recovery will be short-lived, however, if our viewers are deprived of access to network and independent programming or if signal theft is not brought under control. Passage of H.R. 2848 by the Senate and the House is of vital importance. Your support of this bill as it moves to the Senate would be greatly appreciated.

Thank you.

Sincerely,

Mark C. Ellison
Vice President
Government Affairs and
General Counsel

cc: Cindy Blackburn

STATE	TOTAL HOUSEHOLDS WITH SATELLITE RECEIVE SYSTEMS AS OF JANUARY 1, 1988	TOTAL SATELLITE NETWORK AND INDEPENDENT SUBSCRIPTIONS
AK	4,000	1,663
AL	57,500	9,093
AR	42,500	4,297
AZ	34,000	8,180
CA	130,000	32,485
CO	35,000	8,377
CT	6,500	1,427
DC	500	210
DE	4,000	1,388
FL	84,000	20,147
GA	77,500	13,325
HI	2,000	297
IA	31,000	8,164
ID	15,000	3,287
IL	68,000	12,198
IN	60,000	11,364
KS	44,500	7,196
KY	66,000	7,790
LA	59,000	7,144
MA	9,000	2,118
MD	16,500	4,258
ME	9,000	2,700
MI	80,000	16,372
MN	31,500	7,136
MO	60,000	10,238
MS	50,500	6,683
MT	19,000	4,535
NC	76,000	17,728
ND	10,500	2,754
NE	21,500	7,309
NH	21,500	2,879
NJ	16,000	2,665
NM	20,500	3,790
NV	13,500	4,330
NY	89,000	21,688
OH	101,000	12,284
OK	46,500	5,869
OR	26,000	7,287
PA	51,000	12,725
RI	19,000	527
SC	27,500	9,863
SD	9,000	1,708
TN	79,000	12,599
TX	186,500	24,988
UT	16,000	10,619
VA	51,000	13,253
VT	9,000	3,857
WA	29,000	6,944
WI	45,000	11,188
WV	44,000	5,889
WY	13,500	2,947

SUMMARY OF PROVISIONS

H.R. 2848

THE SATELLITE HOME VIEWER ACT OF 1988

- Creates compulsory license for the retransmission of network and independent broadcast stations to home satellite viewers under following terms:
  - Six year license
  - Four years at set rate and two years at negotiated or arbitrated rate
  - Protects network affiliates by limiting service to "white areas" and protects independents by providing for FCC study on feasibility of applying syndicated exclusivity in market.
- Increases penalties for signal theft under Sec. 705 of Communications Act.
- Calls for FCC study of encryption technology to determine appropriateness of standards.

PEPPER & CORAZZINI
ATTORNEYS AT LAW
200 MONTGOMERY BUILDING
1776 K STREET, NORTHWEST
WASHINGTON, D. C. 20006
(202) 296-0600

VINCENT A. PEPPER
ROBERT F. CORAZZINI
[illegible]
PETER GUTMANN
JOHN F. GARZIGLIA
[illegible]
[illegible]

CLARENCE V. [illegible]
[illegible]
[illegible]
OF COUNSEL
FREDERICK W. FORD
1900 - 1980
TELECOPIER (202) 296-5572

April 27, 1987

HAND DELIVERED

The Honorable Robert W. Kastenmeier
2328 Rayburn House Office Building
Washington, D.C. 20515-4902

Dear Congressman Kastenmeier:

Owing to the rapidly changing technological and business climate surrounding the non-cable use of Southern Satellite Systems, Inc.'s WTBS signal it has become imperative that Southern Satellite Systems, Inc. take steps to ensure the security of its satellite transmission of WTBS. To this end Southern Satellite Systems, Inc. commenced full-time scrambling of its satellite transmission three weeks ago. As a result, we have received numerous inquiries from TVRO users and their suppliers. The enclosed is our standard response which I thought might be of interest to you.

I would appreciate an opportunity to briefly discuss this matter with you at your convenience.

Sincerely yours,

Robert F. Corazzini

Robert F. Corazzini
Counsel for Southern
Satellite Systems, Inc.

Enclosure

cc: Michael J. Remmington, Esq.
Selman M. Kremer

TEMPO™
ENTERPRISES

[illegible]

April 22, 1987

Mr. Marty Lafferty
Turner Broadcasting Systems, Inc.
1050 Techwood Drive, N.W.
Atlanta, GA 30318

Dear Marty:

We are about to start the final stage in scrambling our WTBS, Channel 17 satellite transmission. Address testing will commence in early May and is expected to develop into fulltime address scrambling by mid summer.

Unfortunately, our intentions and desire to serve TVRO users can not be fulfilled at this time. It is with great reluctance that I inform you of this fact and advise you that all TVRO users will experience an outage of WTBS reception during the test periods and a complete blackout when fulltime address scrambling is achieved.

It has been TEMPO's intention to serve the non-cabled homes in the United States through the use of the TVRO backyard dish. However TEMPO has consistently stated that in providing service to the TVRO user it would rely on Congress to clarify the Copyright Act in this regard. It is now more than one year since we requested Congressional clarification and set our scrambling plans into motion and we are now in the fulltime fixed key mode of operation and must go on to test and complete the address mode. This stage as you know is much more complex and will in itself, consume the next 3-4 months to complete.

When we initiated our scrambling plans last Spring it was reasonable for us to assume that the copyright issue would have been satisfactorily dealt with by Congress. The initial effort that gave us that hope failed to materialize in the last Congress.

TEMPO ENTERPRISES, P.O. BOX 702160, TULSA, OK 74170, 918/496-3200, TELEX 796322

Mr. Marty Lafferty
April 22, 1987
Page 2

Although we are confident that a similar effort in the present Congress will meet with greater success, TEMPO has again decided not to expose itself to the constant threats of copyright suits by servicing the TVRO user without clarification on this issue from the Congress.

Approximately 12,000 of our cable TV customers have scrambling units in place and our computer control system is nearly finished. We and our customers have invested millions of dollars in this program, and we are thus now compelled to test out the system and complete our scrambling program.

Please realize that our intentions were and still are to serve the TVRO user and that we are continuously evaluating the feasibility of that project. However because of the presently threatened legal actions as regards potential liability under the Copyright Act we do not find ourselves in a position to service the TVRO user.

Sincerely,

Selman M. Kremer

rlg

cc: Edward L. Taylor
Robert F. Corazzini
Terry McGuirk

TEMPO
ENTERPRISES

April 18, 1988

The Honorable Robert Kastenmeier
2328 Rayburn HOB
Washington, D.C. 20515

Re: Satellite Home Viewer
Copyright Act (H.R. 2848)

Dear Chairman Kastenmeier:

We have learned that the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary intends to hold a mark-up on the Satellite Home Viewer Copyright Act (H.R. 2848) on Wednesday of this week. We are extremely delighted and pleased that this legislation will be moving forward.

During the last two (2) months a great deal of the discussion has centered around the "fair price to TVRO subscribers" issue. To address this issue TEMPO proposes modifications to H.R. 2848 as contained in the enclosed proposal.

Under the enclosed proposal the superstation carriers must deal with all distributors and may not charge different TVRO subscriber distributors different prices. This reflects our belief that when a cable operator is distributing the service to TVRO satellite home viewers that operator should be charged the same price as is charged the NRTC or any other TVRO distributor. The proposal also requires the carrier to separately state the copyright royalty fee in billing its customers.

As you are aware the two governmental agencies that have recently studied this issue have both concluded that price regulation of service to home viewers per se is totally unnecessary in light of the competitive market-place that has

TEMPO ENTERPRISES, P.O. BOX 702180, TULSA, OK 74170, 918/496-3200, TELEX 796322

developed. See FCC Second Report on access to scrambled services by home satellite dish owners, and Office of Management and Budget letter to Senator Ernest Hollings dated February 22, 1988 concerning S.889. These federal agencies after investigating the matter have concluded that home dish owners have access to satellite programming at fair prices comparable to or below those paid by cable subscribers.

In closing, TEMPO urges the Subcommittee to preserve H.R. 2848 in its present form to the extent possible. Specifically, it is respectfully requested that any anti-discrimination language be in the form and substance as reflected in the enclosed proposal.

Respectfully submitted,

Bob Corazzini

Robert F. Corazzini
Director and Counsel to
TEMPO Enterprises Inc.

cc: The Hon. Rick Boucher
The Hon. Benjamin Cardin
The Hon. George Crockett
The Hon. Henry J. Hyde
The Hon. Carlos J. Moorhead
The Hon. Patricia Schroeder
The Hon. Mike Synar
The Hon. John Bryant
The Hon. Howard Coble
The Hon. Michael DeWine
The Hon. Dan Lungren
The Hon. Bruce Morrison
The Hon. D. French Slaughter, Jr.

Proposed §119. Limitations on exclusive rights: Secondary transmissions of superstations for private viewing

Subsection (4) should be amended as follows:

> "(4) Notwithstanding the provisions of clause (1) of this subsection, the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation and embodying a performance or display of a work is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506,... if the satellite carrier; (a) fails to make such superstation available to the public, including all distributors who qualify under reasonable financial and character criteria established by the satellite carrier; or (b) discriminates in the charges, other than by volume discounts, between distributors, including specifically cable systems when distributing the superstation to private viewing subscribers (but not when distributing the superstation to their cable subscribers) and other distributors to private viewing subscribers; or (c) willfully and deliberately fails to separately specify the copyright royalty fee required under this section in billing its customers for private viewing.

Section 501 Infringement of Copyright should be amended as follows and new Subsection (e) added:

501(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 119, or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright.

501(e) For any secondary transmission of a superstation for private viewing that is actionable as an act of infringement pursuant to Section 119(a)(4) a qualified distributor to whom service has been refused or to whom a separate copyright charge has not been specified or against whom a discrimination has been made, or a member of the public to whom service has been refused or to whom a separate copyright charge has not been specified or against whom a discrimination has been made pursuant to Section 119(a)(4), shall have standing to sue.

A New Section 511 is Added as Follows:

511 Remedies for Refusal to Sell or Discrimination

Where an action is brought pursuant to section 119(a)(4) by a party identified in subsection (e) of section 501, the remedies provided by section 502 and 505, together with any actual damages suffered by such party as a result of the infringement, shall be available.

PEPPER & CORAZZINI
ATTORNEYS AT LAW
200 MONTGOMERY BUILDING
1776 K STREET, NORTHWEST
WASHINGTON, D. C. 20006

(202) 296-0600

[illegible]

[illegible]
OF COUNSEL

[illegible]

TELECOPIER: (202) 296-5572

July 23, 1987

The Hononrable R. Kastenmeier
2328 Rayburn House Office Building
Washington, D.C. 20515-4902

Dear Congressman Kastenmeier:

As a follow up to our meeting with you this spring concerning Southern Satellite Systems' desire to make the WTBS carrier transmission available to satellite home viewers, Sel Kremer has asked me to forward to you the enclosed press release announcing Southern Satellite's plan for fully secured scrambling and service to the satellite home viewers. As indicated in the press release, service to home viewers will begin in early October. Tempo is still in the process of finalizing the details of the service offering.

As you know, all of the other superstations as well as a number of network affiliated stations have been available to the home viewer for a number of months. Southern has been subject to increasing demands by the home satellite market to make WTBS available, due in no small part to the availability of the other superstations. In order to maintain its competitive posture Southern Satellite has determined that it must go forward at the present time. However we wish to reiterate our complete and unqualified support for H.R. 2848 and continue to believe that only through the enactment of such legislation will the satellite home viewer market be able to develop fully. For this reason we sincerely appreciate all of your efforts in this regard and assure you that we will continue to work with your collegues in an effort to ensure broad support for that bill.

In the meantime should you have any questions concerning the enclosed announcement please feel free to call me.

Sincerely,

Bob Corazzini

Robert F. Corazzini
Counsel for Southern
Satellite Systems, Inc.

cc: Mike Remmington
Selman M. Kremer

TEMPO ANNOUNCES ADDRESSABLE SCRAMBLING OF WTBS AND SERVICE TO TVROs

Tulsa, Okla. --- TEMPO Enterprises, Inc., (AMEX:TPO), today announced that it will begin testing addressable scrambling of SuperStation WTBS this August. TEMPO's addressable scrambling plans for this popular signal also include the initiation of service to the Television Receive Only (TVRO) market.

According to Selman M. Kremer, executive vice president of Operations for TEMPO, the Company has developed its scrambling plans slowly, as well as methodically, over the past two years. Several key factors clearly indicate, however, that the time is now right for TEMPO to aggressively proceed with scrambling in the full addressable mode and implement its strategy for service to TVROs.

"It has always been our intention to serve the TVRO marketplace with WTBS, however, from our standpoint it did not make sense until now. Because General Instrument has taken positive measures to eliminate the tremendous backlog for both commercial and residential descrambling units, and because our own in-house data base is now fully loaded, tested and ready for operation, we can proceed, " Kremer explained.

TEMPO also believes that Congress, through its recent TVRO hearings and the re-introduction of proposed copyright legislation, has strongly encouraged the delivery of cable programming, including superstation signals, to TVRO residential users.

TEMPO will commence testing its addressable scrambling system August 10 and plans to be in fully addressable scrambling mode October 5. Definitive schedules, outlining exact dates, times and the duration of each test will be forthcoming.

TEMPO Enterprises, Inc., through its common carrier subsidiary Southern Satellite Systems, Inc. (SSS), transmits SuperStation WTBS to approximately

15,000 cable systems serving more than 38 million cable subscribers throughout the United States. SuperStation WTBS, the most widely used service of its kind, also reaches a potential 2 million additional subscribers who are home earth station users (TVROs).

Press Contact: Sarina A. Klaver 918/496-3200
Cable Operators with descrambling information/questions contact TEMPO Scrambling Department 918/496-0362

SATELLITE
BROADCAST
NETWORKS

October 23, 1987

Honorable Robert Kastenmeier
2328 Rayburn House Office Building
South Capitol Street & Independence Avenue, SE
Washington, DC 20515

Dear Congressman Kastenmeier:

We respectfully request that Satellite Broadcast Networks be allowed to testify at your November 12 hearings on H.R. 2848 for the reasons mentioned below.

There are one million or more households in rural America that have no access to CBS, NBC or ABC other than from satellite. They have no cable. They have no acceptable signal over the air. Like the rest of America, those households spend most of their viewing hours watching network news, sports and entertainment. If H.R. 2848 fails, they could be without any source of news, educational and cultural programs their neighbors take for granted.

Despite the severity of that situation, not all members understand it yet. Members on your subcommittee who have not yet chosen to support the Bill have told us that they want to hear more about the network situation before making up their minds. They asked as recently as this week if my company would be represented at the November 12 hearings so that they could gain more insight into the most important element of the Bill - access to network programming in rural homes.

We know that H.R. 2848 needs the support of your fellow subcommittee members now so that the Bill can begin to ride the wave of general acceptance into next year. If the network issues are not discussed until next session, we respectfully submit that the Bill will linger in uncertainty until next year without widespread support, a possibly fatal circumstance.

Secondly, resolution of the differences between the networks and SBN will be assisted by examination of the network element of the Bill this year. We stand ready to speak to each of the networks about an acceptable solution to their concerns now just as we have in the past. Early examination of the network provision of the Bill in a public forum will mean that all concerned will have a chance to hear how Congress prefers to resolve this matter. That information can only help to bring the parties closer together. If that discussion does not take place until next year, talks may not have a chance to develop until very late in the process. Smooth passage of the Bill would again be in jeopardy.

We have but one goal in mind in asking to testify this year, to pass H.R. 2848 as fast as possible. SBN has worked long and hard, probably more than any other, to pass the Bill. We will put the same energy behind our testimony in a positive and productive effort to highlight the need and support for your legislation. We have confidence that the exchange of information that will flow from our appearance will bring more support to the Bill and a faster track for industry concensus.

Very truly yours,

G. Todd Hardy
Executive Vice President

GTH:sc

CC: Mike Remington

NETLINK
USA
Serving America's Unserved Markets

March 16, 1988

Mr. Robert Kastenmeier
Chairman
House Copyright Subcommittee
U.S. House of Representatives
House of Representatives
2328 Rayburn HOB
Washington, DC 20515

Dear Chairman Kastenmeier:

Thank you for your sponsorship of the Satellite Home Viewer Copyright Act of 1987. As you know, H.R. 2848 is a finely tuned solution to a difficult problem. In its present state, H.R. 2848 balances the interests of copyright owners, satellite carriers, cable operators, program packagers, MPAA, broadcasters, and most importantly, the rural home satellite television viewer. This remarkable consensus demonstrates clearly that timely passage of the bill would serve the broad public interests.

We deeply appreciate your efforts to support the Satellite Home Viewer Copyright Act of 1987, however, recent provisions regarding program pricing issues threaten the passage of H.R. 2848. Put simply, any program pricing language attached has the potential of killing the Satellite Home Viewer Copyright Act of 1987.

H.R. 2848 was drafted with the simple objective of clarifying public policy that would allow for compliance with copyright law by carriers of satellite programming. Program pricing provisions are divisive, are unrelated to the core of the bill, would raise questions of jurisdiction, and would introduce new opposition to this carefully crafted legislation.

In his testimony, the Register of Copyright, Mr. Ralph Oman recommended timely passage of the bill noting that, "A spirit of innovation tempered with caution has characterized the development of H.R. 2848." I urge you to continue to use caution, and oppose any pricing amendments that would destroy the broad based support the bill currently has.

Sincerely,

Brian McCauley
Brian McCauley
President

NETLINK
USA
Serving America's Unserved Markets

October 20, 1987

The Honorable Robert W. Kastenmeier
2328 RHOB
Washington D.C. 20515

Dear Congressman Kastenmeier:

Netlink USA deeply appreciates your sponsorship of H.R. 2848. As you know, Netlink is the only company that uplinks the 3 major networks, PBS, and 2 independent stations, one of which is a Fox Broadcasting affiliate. You'll also recall we have an agreement with NBC to provide their signal to unserved homes as we announced at the press conference you hosted last summer. To bring you up to date, we anticipate reaching a similar agreement with ABC prior to your hearing on H.R. 2848 and with CBS soon after.

Because of these unique factors we would be happy to testify at the upcoming hearing in support of H.R. 2848 if you feel it would be desireable.

I look forward to hearing from you.

Sincerely,

Brian McCauley

Brian McCauley
Executive Vice President
and General Manager

BJM:cl

The Register of Copyrights
of the
United States of America

Library of Congress
Department 100
Washington, D.C. 20540

(202) 287-8350

September 30, 1988

The Honorable
Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
Washington, D. C. 20515

Dear Chairman Kastenmeier:

I welcome this opportunity to express Copyright Office support for H.R. 2848, the Satellite Home Viewer Copyright Act of 1988, as reported by the House Committee on the Judiciary on August 18, 1988, and as amended by the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce on September 23, 1988. This bill would create a temporary statutory license for satellite carriers that retransmit the signals of superstations and network stations for private home viewing by earth station owners.

H.R. 2848 assures that copyright owners receive adequate compensation for public performance of their works by satellite carriers and also assures reasonable access to the programming for the benefit of home earth station owners. The Copyright Office supports the public policy objectives of the bill. Copyright law should grant authors and copyright claimants rights that assure compensation in order to encourage creation and dissemination of works. The bill reflects balanced copyright policies: satellite carriers pay royalties for their use of copyrighted programming; home dish owners gain access to such programming. Without new copyright legislation, scrambling of signals may impede access. The bill most importantly encourages the development of voluntary licensing structures.

The bill, as reported by the House Committee on Energy and Commerce, would amend the Communications Act of 1934 to require that the Federal Communications Commission investigate whether use of a universal encryption standard should be required of satellite carriers, and to impose various remedies under the Communications Act upon individuals who intercept satellite cable programming in violation of that Act, or who knowingly manufacture or distribute equipment designed to assist such unauthorized interception of programming. The Copyright Office has no objection to the amendments to H.R. 2848 reported by the Committee on Energy and Commerce.

The Copyright Office concludes that passage of the bill would serve the public interest and resolve an important copyright policy issue: the copyright liability of satellite carriers.

Sincerely,

Ralph Oman
Register of Copyrights

PRESTON R. PADDEN
President

February 9, 1988

The Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
  and Administration of Justice
Committee on the Judiciary
U.S. House of Representatives
2328 Rayburn Building
Washington, DC 20515

Re: H.R. 2848

Dear Mr. Chairman:

The attached letter from WTVZ-TV Norfolk, VA supplements the material that we have provided to the subcommittee regarding the injury suffered by local stations when their exclusive program contracts are violated by government conferred compulsory licenses. It is interesting to note that in the Norfolk example, both of the offending distant signals fully support the right of local stations to enforce their exclusive program contracts.

Obviously, we need to strengthen the recognition of our program contracts by reining in the cable compulsory license.

Best regards,

Preston R. Padden

PRP:g

Attachment

33
WTVZ-TV
NORFOLK
900 GRANBY STREET
NORFOLK VA 23510
804-622-3333
PENINSULA 804-245-3333

February 4, 1988

Mr. Preston Padden
President, INTV
1200 Eighteenth Street
Washington, D.C. 20036

Dear Preston:

I noted your promise to supply the House Committee with data that demonstrates the irreparable harm being done by the importation of super stations.

It so happens that Norfolk is an ideal demonstration of the audiences ($) being siphoned away from Independents by the duplication of the same program by imported stations.

Using the November 1987 ARB, we obtained an AID run on ADI kids 2-11 for the 3:00-5:00pm time period. The following are the results:

M-F Time	Program	Station	ADI Rating k 2-11	Station	ADI Rating k 2-11
4:30p	Duck Tails	WTVZ	4.2	WTTG	1.7
4:00p	Real Ghostbusters	WTVZ	4.5	WTTG	1.9
3:30p	Smurfs	WTVZ	1.3	WDCA	0.4
4:30p	Jetsons	WYAH	3.5	WDCA	1.0
5:00p	Brady Bunch	WYAH	5.9	WDCA	1.6

WTTG Ducktails reduces WTVZ audience by 40.4%
WTTG Real Ghostbusters reduces WTVZ Audience by 42.2%
WDCA Smurfs reduces WTVZ audience by 30.7%
WDCA Jetsons reduces WYAH audience by 28.5%
WDCA Brady Bunch reduces WYAH audience by 27.1%

If you feel it appropriate, I will obtain a similar AID run on 7:30-8:00pm where WTBS and WTVZ both run Sanford and Son.

Further, it is interesting to note that WTVZ airs a total of 25 half-hours of weekday syndicated programming. (The only non-syndicated programming between 6:00am and 12:30am is paid religious from 10:00am-12:00noon, movie 12noon-2:00pm, and our prime movie 8:00-10:00pm).

Mr. Preston Padden
Page Two

On an absolute basis 23 of the half hours we program are duplicated by cable imported superstations everyday in 58% of the households in our market. That is 92% of our syndicated product. Syndication represents 77% of WTVZ's investment in programming. Program costs are 52% of our total operating budget in 1988. If Congress wants to see damage, we have it.

Regards,

Charles A. McFadden
Vice-President
General Manger

CAM/exh

cc: Tim McDonald
John Trinder
Kathy Baske

NEW INDEPENDENT MARKETS

1981	1982	1983	1984	1985	1986	1987
38 Raleigh	41 Grand Rapids	55 Little Rock	33 Columbus, OH	53 Shreveport	67 Syracuse	179 Biloxi-Gulfport
52 Tulsa	43 Charleston-Huntington	60 Knoxville	42 Providence	85 Flint-Saginaw	69 Portland, ME	186 Eureka-Arcata, CA
62 Albuquerque	47 Birmingham	66 Des Moines	48 Dayton	58 Scranton	70 Omaha	195 Hagerstown
63 Richmond	51 Albany-Schenectady-Troy	75 Paducah	59 Wichita	65 Toledo	73 Roanoke-Lynchburg (3 New Stations)	204 Ottumwa
87 Columbia, SC	56 West Palm Beach	79 Austin	85 Jackson, MS	74 Davenport	76 Lexington, KY	
110 Salinas	57 Mobile	83 Springfield, MO	90 Lincoln-Hastings	86 Tri Cities	106 Madison, WI	
125 Reno	78 Spokane	88 Evansville	187 Tuscaloosa	89 Huntsville	116 Monroe, LA	
136 Boise	100 Peoria	102 Fargo		99 Colorado Sprgs	134 LaCrosse, WI	
141 Lubbock	100 Lansing	115 Columbus, GA		106 Charleston, SC	143 Erie, PA	
	118 Amarillo	170 Gainesville		107 Fort Myers	143 Odessa, TX	
	150 Albany, GA	192 San Angelo		108 Savannah	153 Columbia-Jefferson City	
	171 Lake Charles	196 Bowling Green		126 Wichita Falls	158 Utica	
		Anchorage		190 Jackson, TN	Hilo, HI	
9 Markets	12 Markets	13 Markets	7 Markets	13 Markets	13 Markets	4 Markets

Note: Market Rankings - ADI's (1985-1986)

INTV
ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC., 1200 EIGHTEENTH ST., N.W. • WASHINGTON, D.C. 20036 • (202) 887-1970

February 2, 1988

The Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
 and the Administration of Justice
Committee on the Judiciary
U.S. House of Representatives
2328 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 2848

Dear Mr. Chairman:

In 1976, Congress granted cable systems a compulsory license to exhibit distant television stations but, the FCC's network non-duplication and syndicated exclusivity rules prevented that license from superseding and abrogating the exclusive program contracts of local stations. In 1980, the FCC repealed its syndicated program rule but retained its network rule. As a result, today, cable systems are free to import distant signals that duplicate the syndicated programs -- but not the network programs -- of local television stations. Correcting this indefensible regulatory discrimination is a high priority for our association.

The FCC currently is conducting a rulemaking in which it is considering the reinstatement of its syndicated exclusivity rule. INTV has submitted voluminous data in that proceeding documenting the damage suffered by local stations when their program contracts are abrogated by the cable compulsory license. Portions of that data, labeled Appendix B, Appendix C and Appendix D are attached to this letter.

Because all Independent stations purchase their programs from the same finite pool of available shows, extensive duplication occurs when an Independent is imported from its local market into a distant market. Appendix B lists 682 instances where syndicated programs on 34 typical INTV member stations are duplicated on distant signals imported via the cable compulsory license. In the absence of a syndicated exclusivity rule, the local Independent stations are powerless to enforce their exclusive license agreements for these programs. As a result, the local Independent station loses audience ratings to the distant station even though viewers are watching programs for which the local station has purchased exclusive licenses. The analysis in Appendix B shows that the ratings lost to the distant signal often represent a significant portion of the local station's audience.

Appendix C consists of an attempt to estimate the financial impact of the audience losses due to distant signal importation on cable. That analysis, conducted by the Butterfield Communications Group of Cambridge, MA, concludes that "independent television stations suffer substantial economic injury." This injury will be exacerbated by the loss of the FCC's must-carry rule. Now, even though a local station purchases exclusive local rights to a program, cable operators can deny carriage of that local station and import the same program on a distant signal.

Appendix D (a Washington Post story entitled "No NFL for Channels 5 or 20"), demonstrates another perverse effect of compulsory licensing. In Washington, DC, Channels 5 and 20 were denied the opportunity to bid for the local broadcast rights to a Redskins-Dolphins game because their signals are imported by cable into other markets -- a phenomenon over which the stations have no control and a phenomenon that they are powerless to stop. The cable network, ESPN, complained that a local license to Channels 5 or 20 would undermine ESPN's exclusivity in the markets where those stations are imported by cable. On many other occasions cable interests have expressed their recognition of the importance of program exclusivity -- at least insofar as the cable industry's proprietary programming is concerned.

INTV, NAB, the networks and MPAA are all working hard to seek the re-adoption of the FCC's syndicated exclusivity rule and to secure improvements in the network non-duplication rule. H.R. 2848 moves in the opposite direction by expanding compulsory licensing to the satellite dish market without any mechanism to honor and respect the exclusive program licenses purchased by local stations.

The tragedy is that it is not necessary to abrogate local station program agreements in order to bring television service to consumers not served by terrestrial broadcasting. It is possible to craft a new statutory license applicable only to consumers who reside in so-called white areas (or even white pockets), and/or a statutory license that yields in the face of a conflict with licenses purchased in the marketplace. The Independent stations would be happy to assist, in a flexible and constructive way, in the drafting of such a bill.

Unfortunately, some or all of the three commercial television networks have chosen another course. Some network representatives have proposed amendments that would recognize and honor local station contracts for network programs but not for syndicated programs. The net effect of these amendments would be, (1) to discourage affiliate stations from choosing to pre-empt their network by exhibiting non-network programs; and, (2) to bestow a copyright preference on local network affiliate stations to the disadvantage of local Independent stations. The network papers argue that this blatant discrimination is warranted because the networks allegedly are "special".

Simply stated, there is no copyright cognizable distinction that can or should be made between a local station contract for a network program and a local station contract for a program from some other source. The Independent stations simply cannot sit by and acquiesce in legislation that stamps us as second class citizens for copyright purposes. Moreover, from a Communications Act perspective, the amendments proposed by the networks would be grossly anti-competitive. The FCC and the Congress have spent years attempting to encourage and stimulate non-network sources of television programming. Granting a copyright preference to network program contracts would have the opposite effect.

If any group of stations is to be accorded some special copyright accommodation, it should be the Independent stations. The Independents face numerous "special" challenges compared to the relatively advantaged existence of network stations. For the most part, the Independent stations struggle along on UHF channels, while the affiliates cruise through life in the VHF band. Affiliates are fed a ready made program schedule by the network. The Independent must purchase or produce every single minute of its daily program schedule. For this reason, the Independents are the stations that have suffered the most from the recent dramatic increases in the cost of syndicated television programs. Accordingly, the Independents are the stations most in need of having their program contracts honored and respected by our copyright laws.

Despite these obvious grounds for seeking some "special" accommodation, the Independents seek only equal treatment. INTV strongly supports the right of local network affiliates to have all of their program contracts honored and respected by our copyright laws. We would hope that they would display the same attitude toward the local Independent stations in their markets.

Before you vote for any language that discriminates against Independent stations, or which accords "special" treatment to network programs, please think about the local stations that serve your Congressional District. Do you really think that our copyright laws should honor and respect the program contracts of WISC-TV (Channel 3), WMTV (Channel 15) and WKOW-TV (Channel 27) but not the program contracts of WMSN-TV (Channel 47)? Wouldn't it be better to work together on a bill that recognized and accommodated the legitimate interests of all parties?

We support the goal of bringing television service to unserved households. However, in our view, any statutory license for the satellite industry must:

1) be limited to unserved areas with respect to both network and Independent stations; or

2) include syndicated exclusivity and network non-duplication provisions; or

3) include a provision requiring carriers to secure the affirmative consent of any station before its signal is taken and imported into other markets (the consenting station having first secured the rights necessary to grant such consent).

Mr. Chairman, we respectfully request that this letter, and the attachments hereto, be made a part of the official record of the hearings on H.R. 2848.

Very truly yours,

Preston R. Padden
President

PRP:g

Attachments

cc: Mr. Gary DeHaven, WISC-TV
Ms. Laurie Leonard, WMTV
Mr. Thomas Hartman, WKOW-TV
Mr. Bill Schereck, WMSN-TV

APPENDIX B

ANALYSIS OF VIEWERSHIP TO PROGRAMMING DUPLICATED BY IMPORTED SIGNALS

Susan M. Rynn
Director, Research
INTV

As the INTV Research Director, my goal with respect to the syndicated exclusivity issue has been to determine the extent to which locally owned programming that is duplicated by cable-imported distant signals is viewed on those distant signals, thus diminishing the potential audience of the home market station. While it is necessary to analyze a specific point in time in order to quantify that viewership, it is also my intention to identify trends through this research which will help us determine probable future market conditions assuming the absence of syndicated exclusivity.

Four slightly different approaches were used in my analysis based on February, 1987 Nielsen viewing data. First, I traced programming airing on three superstations and one regionally carried independent station from approximately 3-8 PM to twenty-seven markets around the country ("Phase I"). Second, focusing on the three markets singled out by NCTA in its May 1987 "Position Paper on Syndicated Exclusivity", I identified syndicated programs across dayparts duplicated by the two most widely carried superstations ("Phase II"). Third, I analyzed numerous syndicated programs duplicated by any imported signal (superstation, regional independent or affiliate) in four varied markets ("Phase III"). Finally, the fourth phase of my analysis examined feature film title duplication ("Phase 4").

For each phase of this research, the ratings for the distant signal in both cable and total television households were obtained through special runs ordered from the A.C. Nielsen Co. The ratings reflect the percentage of all television households (or cable households) in the market that viewed the program on the imported signal. It is important to consider ratings in cable households since those are the households in which local and imported signal program duplication occurs. Also, assuming that cable penetration increases, that rating more nearly predicts the future total television household rating. Ratings are expressed in the standard format used in the quarterly local market television rating books.

Phase I: 27-Market Audience Loss Profile

The 3-8 PM analysis included WGN (Chicago), WTBS (Atlanta), WOR (New York), WPIX (New York) and WSBK (Boston). Viewing levels for duplicated programs on these distant signals ranged from 1-4 rating points in total television households and 1-6 rating points in cable households. In many cases, the duplicated program earned a one rating on the distant signal. Even one rating point has a significant effect in light of the fact that average independent daypart ratings in several markets reach only the 1 to 3 rating point level. In other instances, the duplicate program distant signal rating was significantly higher than one rating point.

For example, WGN's "Facts of Life" earned 2 rating points in all television households and 4 rating points in cable households in San Antonio. Local independents in that market averaged a 5 total television household rating in early fringe. The distant signal program rating, therefore, represented 40% of the home station's average time period rating. In Amarillo, WGN's "Facts of Life" earned 3 and 4 rating points in total television and cable households, respectively. This data clearly demonstrates that duplicate programs on distant signals have a significant impact in many small to medium-sized markets.

WTBS presents an example of distant signal ratings' impact in a large market. Cleveland is the 10th ranked Nielsen Designated Market Area and was 46% cabled in February, 1987. A local station carried "Scooby Doo", also brought into the market on WTBS. Despite below average cable penetration and relatively mature independent stations, WTBS' "Scooby Doo" still siphoned one rating point in total TV households and 2 rating points in cable households away from the local stations. WTBS had an even stronger impact in smaller markets like Tri-Cities (Bristol, VA-Kingsport-Johnson City, TN) and Lexington, Ky, where newer independents are struggling to carve out a market niche. In Tri-Cities, duplicated airings of "Gilligan's Island" and "Andy Griffith" earned 4 and 5 rating points each in television and cable households. In Lexington, "The Flintstones" on WTBS averaged three rating points, one rating point higher than the local independent's average in the weekday afternoon children's programming daypart.

WWOR and WPIX enjoy significant regional out-of-market carriage. Their impact in nearby markets is considerable. In Johnstown-Altoona ten programs were duplicated by the two superstations and each drew one or two rating points away from the local stations. In Rochester, seven programs duplicated by WWOR and WTBS pulled ratings from the local station that also owns the programs. WWOR's "Mama's Family" earned a 2 and 3 rating in Albany total television and cable households. Home market independents averaged the same rating in the early fringe daypart.

WSBK's "Mama's Family" also aired in Albany and pulled yet another rating point out of the market. Here, two superstations and a regional independent are all in direct competition for viewers to programs for which an Albany station purchased "exclusive" rights in the market. In Hartford, WSBK claimed one rating point for each of four programs likely to air in the early fringe daypart. Four more programs were duplicated in Portland, ME. Each drew a one rating in television households and two programs doubled that rating in cable households.

Set forth below is a detailed listing of the duplicate program distant signal audience losses documented in Phase I of my research.

SYNDEX
DUPLICATED PROGRAMMING
ANALYSIS

HOME MARKET	MARKET RANK	% CABLE PENE.	IMPORTED SIGNAL	DUPLICATED PROGRAM	IMPORTED SIGNAL RTG IN HOME MKT	
					CABLE HH	TOTAL HH
Omaha	70	54.1	WGN	Facts of Life	2	1
			WGN	Transformers	1	1
			WGN	G.I. Joe	1	1
Rockford	115	57.8	WGN	The Jeffersons	2	1
Champaign/ Springfield	75	62.4	WGN	Transformers	1	1
			WGN	G.I. Joe	2	1
Peoria	104	57.5	WGN	Transformers	1	1
			WGN	G.I. Joe	1	1
Rochester	69	54.2	WPIX	G.I. Joe	1	1
			WPIX	Transformers	1	1
			WOR	Magnum	2	1
			WOR	Entertainment Tonight	1	1
			WOR	The New Gidget	2	1
			WOR	It's A Living	1	1
			WOR	Mama's Family	2	1
Johnstown/ Altoona	85	70.7	WPIX	Smurfs	1	1
			WPIX	Ghostbusters	1	1
			WPIX	G.I. Joe	1	1
			WPIX	Transformers	1	1
			WPIX	What A Country	2	1
			WOR	Bosom Buddies	2	1
			WOR	The New Gidget	1	1
			WOR	Mama's Family	2	2
			WOR	It's A Living	1	1
Albany, NY	52	59.9	WPIX	Smurfs	1	1
			WPIX	G.I. Joe	1	1
			WPIX	Gimme A Break	3	2
			WOR	It's A Living	2	1
			WOR	Mama's Family	3	2
			WSBK	Hogan's Heroes	2	1
			WSBK	It's A Living	1	1
			SBK	Mama's Family	1	1

HOME MARKET	MARKET RANK	% CABLE PENE.	IMPORTED SIGNAL	DUPLICATED PROGRAM	IMPORTED SIGNAL RTG IN HOME MKT	
					CABLE HH	TOTAL HH
Hartford	24	70.3	WSBK	MASH	1	1
			WSBK	Barney Miller	1	1
			WSBK	Hogan's Heroes	1	1
			WSBK	Mama's Family	1	1
Portland, ME	80	55.0	WSBK	She-RA	1	1
			WSBK	He Man	1	1
			WSBK	Ghostbusters	2	1
			WSBK	One Big Family	2	1
San Antonio	44	62.9	WGN	Facts of Life	4	2
			WGN	Transformers	2	1
			WGN	G.I. Joe	2	1
			WTBS	Scooby Doo	2	1
			WTBS	Andy Griffith	3	2
			WTBS	Honeymooners	3	2
Amarille	120	65.5	WGN	Facts of Life	4	3
			WGN	Transformers	2	1
			WGN	WKRP In Cincinnati	2	2
			WGN	G.I. Joe	3	2
			WTBS	Scooby Doo	4	3
			WTBS	Flintstones	6	4
Odessa	139	68.6	WGN	Transformers	2	1
			WGN	G.I. Joe	1	1
			WTBS	Flintstones	2	2
Richmond	54	45.2	WTBS	Beverly Hillbillies	1	1
				Andy Griffith	1	1
				Sanford & Son	3	1
Tulsa	53	48.0	WTBS	Flintstones	1	1
Cleveland	10	46.0	WTBS	Tom & Jerry	1	*
			WTBS	Scooby Doo	2	1
Anchorage	157	36.2	WTBS	Gilligan's Island	2	1
			WTBS	Andy Griffith	3	1
			WTBS	Honeymooners	1	1

* Below one rating point

HOME MARKET	MARKET RANK	% CABLE PENE.	IMPORTED SIGNAL	DUPLICATED PROGRAM	IMPORTED SIGNAL RTG IN HOME MKT	
					CABLE HH	TOTAL HH
Knoxville	60	48.6	WTBS	Scooby Doo	3	2
Mobile	59	53.6	WTBS	Andy Griffith	2	1
				Tom & Jerry	1	1
Grand Rapids	40	51.1	WTBS	Scooby	2	1
				Gilligan's Island	2	1
Oklahoma City	36	59.0	WTBS	Scooby Doo	1	1
				Flintstones	2	1
Albany, GA	153	53.5	WTBS	Scooby Doo	2	1
				Flintstones	2	1
				Andy Griffith	4	2
Tri-Cities (VA-TN)	87	55.5	WTBS	Scooby Doo	3	2
				Flintstones	3	2
				Gilligan's Island	5	4
				Andy Griffith	5	4
Chattanooga	82	50.7	WTBS	Flintstones	2	1
Gainesville	170	58.1	WTBS	Andy Griffith	4	2
Lexington, KY	79	60.7	WTBS	Flintstones	3	3
San Angelo	195	86.0	WTBS	Scooby Doo	5	4
Birmingham	39	49.0	WTBS	Flintstones	2	1
				Andy Griffith	3	1

Source: A. C. Nielsen, February, 1987

Phase II: Three-Market Superstation Profile

WTBS and WGN, the most widely carried superstations, warrant further investigation. The second part of my analysis focused on programming duplicated by those stations in three additional markets. To avoid any possible inference that I have selectively used unrepresentative markets, I chose three markets cited in the NCTA position paper on syndicated exclusivity, i.e., Indianapolis, Cincinnati and Milwaukee.

Indianapolis is the market for which the NCTA listed one cable system's 199 hours of duplicated programming in support of the theory that syndicated exclusivity would present tedious work for cable operators. I examined 22 instances of programming duplicated by WTBS and WGN in order to measure the harmful impact on stations licensed to serve Indianapolis.

Cincinnati and Milwaukee were cited by the NCTA as markets where local stations have "thrived" despite importation of distant signals both before and since the repeal of syndicated exclusivity. Despite the fact that these markets have below average cable penetration and mature independents that have been on the air for well over twenty years, ratings were drawn out of the market by duplicative programming on WTBS and WGN. While Phase I of my analysis indicates that smaller, heavily cabled markets are more strongly impacted by WGN and WTBS, it is important to note that harm is also done in markets such as Indianapolis, Cincinnati and Milwaukee.

In Indianapolis, another example of dual duplication emerged. "Andy Griffith" was duplicated by both WGN and WTBS. Together the duplicative telecasts earned two rating points in total television households and three in cable households. Most of the other duplicated programs each pulled a total television household rating point out of the market. Half of those averaged two rating points in cable households. In the area of children's programming, those ratings were 50% to 100% of the ratings earned by the local independents. WGN's "WKRP in Cincinnati" did the most damage in the market, pulling a two rating in television households and a three in cable households. WKRP's rating on WGN was about 30% of WTTV Indianapolis' average rating in early fringe. WTTV is an independent that went on the air in 1949.

WGN and WTBS duplicated at least twenty-nine programs owned by Cincinnati stations. In most instances, the imported signal telecasts earned a one rating in television and/or cable households. WXIX, the local independent which signed on in 1968, has strong daypart ratings. Even though WXIX's afternoon kids' block averaged a five rating, duplicated kids' shows pulled ratings out of the market. Again, WTBS and WGN both duplicate "Andy Griffith". Four of the programs duplicated by WTBS earned two rating points in cable households.

The situation in Milwaukee is similar to that in Cincinnati. I identified 23 programs duplicated by WGN and WTBS. "Andy Griffith" is also owned by the local independent.

Together, WTBS and WGN achieved two television household and three cable household ratings with the program. With relatively low cable penetration of 42.1%, some duplicated programs achieved less than a one rating in total television households, but did pull one rating in cable households where they compete with the local stations. WGN's "Barney Miller" had quite an impact, drawing three rating points in cable households and two in television households. Detail for Indianapolis, Cincinnati and Milwaukee follow.

SYNDEX
DUPLICATED PROGRAMMING ANALYSIS

HOME MARKET	MARKET RANK	% CABLE PENE.	IMPORTED SIGNAL	DUPLICATED PROGRAM	IMPORTED SIGNAL RTG IN HOME MKT CABLE HH	IMPORTED SIGNAL RTG IN HOME MKT TOTAL HH
Indianapolis	23	51.8	WGN	Andy Griffith	1	*
				Barney Miller	2	1
				Dick Van Dyke	1	*
				Facts of Life	1	1
				GI Joe	1	1
				The Jeffersons	2	1
				Mask	1	*
				Smurfs	1	1
				Soul Train	2	1
				Transformers	1	1
				The Twilight Zone	1	*
				WKRP in Cincinnati	3	2
			WTBS	Andy Griffith	2	1
				Beverly Hillbillies	1	1
				Bewitched	1	1
				Flintstones	2	1
				Gilligan's Island	2	1
				Honeymooners	2	1
				I Love Lucy	1	1
				Perry Mason	1	1
				Sanford & Son	2	1
				Scooby Doo	2	1

*Below one Rating Point

Source: A.C. Nielson, Feb. '87

SYNDEX
DUPLICATED PROGRAMMING ANALYSIS

HOME MARKET	MARKET RANK	% CABLE PENE.	IMPORTED SIGNAL	DUPLICATED PROGRAM	IMPORTED SIGNAL RTG IN HOME MKT	
					CABLE HH	TOTAL HH
Cincinnati	30	47.4	WGN	Andy Griffith	1	*
				At The Movies	1	*
				Barney Miller	1	1
				Charles in Charge	1	1
				GI Joe	1	*
				It's A Living	1	*
				JEM	1	*
				Leave It To Beaver	1	*
				Lifestyles of the Rich & Famous	1	*
				Love Boat	1	1
				One Big Family	1	*
				Puttin' on the Hits	1	1
				Soul Train	1	1
				Tales from the Darkside	1	*
				The Jeffersons	1	1
				Transformers	1	1
				The Twilight Zone	1	*
				Wild Kingdom	1	*
			WTBS	Andy Griffith	2	1
				Beverly Hillbillies	2	1
				Bewitched	1	1
				I Dream of Jeannie	1	1
				The Flintstones	2	1
				The Honeymooners	2	1
				I Love Lucy	1	1
				Perry Mason	1	1
				Scooby Doo	1	1

*Below one rating point

Source: A. C. Nielsen, Feb. '87

SYNDEX
DUPLICATED PROGRAMMING
ANALYSIS

HOME MARKET	MARKET RANK	% CABLE PENE.	IMPORTED SIGNAL	DUPLICATED PROGRAM	IMPORTED SIGNAL RTG IN HOME MKT	
					CABLE HH	TOTAL HH
Milwaukee	29	42.1	WGN	Andy Griffith	2	1
				Action Theatre	1	*
				Barney Miller	3	2
				Charles in Charge	1	1
				Dick Van Dyke	1	1
				Facts of Life	2	1
				Ghostbusters	1	*
				GI Joe	1	*
				Heathcliff	1	*
				Hogan's Heroes	1	*
				It's A Living	1	*
				Leave It To Beaver	2	1
				Lifestyles of Rich & Famous	1	1
				Odd Couple	1	1
				Rawhide	2	1
				Smurfs	1	*
				Twilight Zone	1	*
				Wild, Wild West	1	*
			WTBS	Andy Griffith	1	1
				Bewitched	1	*
				Flintstones	1	*
				Perry Mason	2	1
				Scooby Doo	1	*

*Below one rating point

Source: A. C. Nielsen, '87

Phase III: 4-Market Multi-Source Duplication Profile

The next phase of my analysis involved four markets -- San Diego, Reno, Roanoke (VA) and Fort Wayne (IN) -- from which I extracted syndicated programs duplicated by several sources including superstations and out-of-market independents and affiliates. These markets illustrate the far-reaching effect of several sources chipping away at local market audiences for specific programs. In San Diego, five distant signals duplicated locally owned programming; in Reno, four distant signals; in Roanoke six distant signals; and in Fort Wayne, three distant signals.

San Diego-owned programming is duplicated by one superstation (WTBS), three out-of-market independents (KTTV, KTLA, and KCOP) and an out-of-market affiliate (KNBC). Generally, most duplicated programs drew one rating point in television and cable households. A number of individual programs earned considerably higher ratings. In fact, with the exception of KNBC, each of the distant signals duplicated at least one program that earned two or more rating points in television households and even more in cable households. One of KTTV's telecasts of "MASH" drained four full rating points out of television households and six rating points out of cable households. San Diego's two more mature independents averaged only three rating points in the important early fringe daypart. WTBS' "Gunsmoke" earned three cable and two total television rating points; KTLA's "Magnum" earned four and three ratings.

Three of KCOP's duplicative programs drew two ratings in each household category. "Wheel of Fortune", the number one rated syndicated program is duplicated by KCOP which draws three television and four cable rating points out of the market. KNBC's duplicative programming illustrates that syndicated fare duplicated by imported affiliates can also have an impact. In total, all of the duplicated programs add up to 69 total television household and 90 cable household rating points in San Diego. Those figures do not even take into account the fact that many of those programs run stripped and earn up to twenty times their average rating over an audience measurement sweep period.

Local stations in Reno compete for program specific audience with one superstation (WTBS), two distant independents (KTVU and KTXL) and one distant affiliate KCRA. Of the twenty-seven duplicated programs analyzed, more than half achieved one rating point in total television households and often achieved a two rating in cable households. In this market, dual duplication of "Andy Griffith" pulled three and five ratings in television and cable households, or one half of the early fringe average for KAME, the local independent. KCRA's "Mama's Family" also drew a three television household rating. Six of the programs duplicated by KTXL earned two ratings in television households. "Facts of Life" earned a four in cable households, KTXL's highest cable rating for a duplicated program. Reno's total for duplicated program averages was 34 television household and 50 cable household ratings.

Roanoke's local stations face audience competition for programs they own from two superstations (WTBS and WGN), one imported independent (WTTG, Washington, D.C.) and three imported affiliates (WFMY, WXII and WGHP). The least significantly viewed duplicated programs aired on WGN. All 12 of those I found did achieve at least one rating point in cable homes. Roanoke's independents signed on in 1986 and each earned a one rating in important kids' dayparts and in early fringe in February, 1987. Clearly, severe program duplication increases the difficulty of establishing strong ratings. Some programs are repeatedly duplicated and viewed on all stations. "Andy Griffith" aired on three imported signals for a total of five television household and eight cable household rating points. "Bewitched", "The Flintstones" and "Three's Company" were each duplicated twice. WTTG's "MASH" received two television household and three cable household rating points. Five WTBS duplicated programs each earned two rating points in television households. Four of them doubled that rating in cable households, and the fifth pulled a three cable household rating. Each of the three imported affiliate stations drew one to two television and one to three cable household ratings out of the market. The grand total for average duplicated program ratings in Roanoke was 50 television household and 86 cable household rating points.

Fort Wayne is a small market with relatively low cable penetration and an independent that has been on the air for ten years and maintains healthy rating levels. Duplicated programs on WTBS, WGN and WTTV, an imported independent, all siphon ratings away from the local independent and from WANE, a local affiliate. In my analysis, fifteen programs duplicated by distant signals earned a combined average rating of nine total household and 25 cable household points. Several programs in this market were twice duplicated -- "Andy Griffith", "Facts of Life", "G. I. Joe" and "Leave It To Beaver". "Facts of Life" on WGN and WTTV siphoned two total television household and three cable household rating points away from the local station carrying the program. Dual duplication of "G. I. Joe" pulled one television household and four cable household rating points out of the market. The most viewed program duplicated by WTTV was "Mama's Family", which drew one and two rating points in television and cable households. Attached is market detail for each of four markets included in the third stage of my analysis.

SYNDEX
DUPLICATED PROGRAMMING
ANALYSIS

HOME MARKET	MARKET RANK	% CABLE PENE.	IMPORTED SIGNAL	DUPLICATED PROGRAM	IMPORTED SIGNAL RTG IN HOME MKT	
					CABLE HH	TOTAL HH
San Diego	26	67.1	WTBS	Beverly Hillbillies	1	1
				Flintstones	1	1
				Gilligan's Island	1	1
				Gunsmoke	3	2
				Hogan's Heroes	1	1
				Sanford & Son	1	1
				World of Animals	1	*
			KTTV	Dance Fever	1	1
				Dennis - Animated	1	1
				Facts of Life	4	3
				Flintstones	1	1
				Gobots	1	1
				Hour Magazine	1	1
				Late Show - Joan Rivers	1	1
				MASH	6	4
				MASH	1	1
				Soul Train	1	1
				Swat	1	1
				Three's Company	3	2
				Three's Company	3	2
				Thundercats	1	1
				Too Close for Comfort	4	3
				9 to 5	1	*
			KTLA	Chips	1	*
				Charles in Charge	1	1
				Emergency	1	1
				Fame	1	1
				Fame	1	1
				Happy Days Again	1	*
				Jem	1	1
				Laverne & Shirley	1	*
				Little House on the Prairie	2	1
				Magnum	4	3
				Puttin' on the Hits	1	1
				Put on Kids	1	1
				What's Happening Now	1	1

*Below one rating point

Source: A. C. Nielsen, Feb. '87

SYNDEX
DUPLICATED PROGRAMMING
ANALYSIS

HOME MARKET	MARKET RANK	% CABLE PENE.	IMPORTED SIGNAL	DUPLICATED PROGRAM	IMPORTED SIGNAL RTG IN HOME MKT	
					CABLE HH	TOTAL HH
San Diego	26	67.1	KCOP	Bewitched	1	1
				Buck Rogers	2	2
				Different Strokes	1	1
				GI Joe	1	*
				Gimme A Break	2	2
				I Dream of Jeannie	1	1
				Inspector Gadget	2	2
				Jeopardy	4	3
				Jetsons	1	1
				Lifestyles of the Rich & Famous	2	1
				My Little Pony	1	*
				She-Ra	1	1
				Smurfs	1	1
				Star Trek	1	1
				Transformers	1	*
				Wheel of Fortune	4	3
			KNBC	Donahue	1	1
				Entertainment This Week	1	1
				Entertainment Tonight	1	1
				Mama's Family	1	1
				Throb	1	1

*Below one rating point

Source: A. C. Nielsen, Feb. '87

SYNDEX
DUPLICATED PROGRAMMING ANALYSIS

HOME MARKET	MARKET RANK	% CABLE PENE.	IMPORTED SIGNAL	DUPLICATED PROGRAM	IMPORTED SIGNAL RTG IN HOME MKT	
					CABLE HH	TOTAL HH
Reno	131	60.8	WTBS	Andy Griffith	3	2
				The Flintstones	2	1
				Scooby Doo	1	1
			KTVU	Gobots	1	*
				Lifestyles of the Rich & Famous	1	1
				Late Show - Joan Rivers	1	*
				Magnum	2	1
				MASH	2	1
				Three's Company	1	1
				WKRP in Cincinnati	2	1
				9 to 5	2	1
			KTXL	Andy Griffith	2	1
				Funtastic	1	1
				INN USA Tonight	1	1
				Love Boat	1	1
				Star Trek	3	2
				Vegas	3	2
				Facts of Life	4	2
				Fall Guy	3	2
				Ghostbusters	3	2
				Gilligan's Island	1	1
				Gimme A Break	2	1
				Taxi	3	2
			KCRA	Donahue	1	1
				Mama's Family	3	2
				One Big Family	1	1
				Small Wonder	1	1

*Below one rating point

Source: A. C. Nielsen, Feb. '87

SYNDEX
DUPLICATED PROGRAMMING ANALYSIS

HOME MARKET	MARKET RANK	% CABLE PENE.	IMPORTED SIGNAL	DUPLICATED PROGRAM	IMPORTED SIGNAL RTG IN HOME MKT	
					CABLE HH	TOTAL HH
Roanoke	71	52.6	WTBS	Andy Griffith	5	3
				Bewitched	1	1
				I Dream of Jeannie	1	1
				Flintstones	4	2
				Gilligan's Island	4	2
				Honeymooners	4	2
				Scooby Doo	4	2
				Tom & Jerry	3	2
			WGN	Barney Miller	1	1
				Ghostbusters	1	*
				Heathcliff	1	*
				Leave It To Beaver	1	*
				Mask	1	*
				One Big Family	1	1
				Soul Train	2	1
				Tales From the Darkside	1	*
				The Jeffersons	1	1
				Transformers	1	*
				Twilight Zone	1	1
				WKRP In Cincinnati	1	1
			WTTG	Andy Griffith	1	*
				Bewitched	1	*
				Fame	2	1
				Fat Albert	1	*
				G. I. Joe	1	*
				Inhumanoids	1	1
				Inspector Gadget	1	*
				MASH	3	2
				She-Ra	1	*
				Silverhawks	1	1
				Taxi	2	1
				Three's Company	2	1
				Three's Company	3	1
				Thundercats	1	1
				WWF Wrestling	1	1

*Below one rating point

SYNDEX
DUPLICATED PROGRAMMING ANALYSIS

HOME MARKET	MARKET RANK	% CABLE PENE.	IMPORTED SIGNAL	DUPLICATED PROGRAM	IMPORTED SIGNAL RTG IN HOME MKT CABLE HH	TOTAL HH
			WXII	Entertainment Tonight	1	1
				People's Court	2	2
				The Judge	1	1
			WGHP	Dallas	2	1
				Divorce Court	3	2
				Fame	1	1
				Jeopardy	2	1
				Oprah Winfrey	2	2
				Small Wonder	1	1
				Three's Company	3	2
				Throb	1	1
				Wheel of Fortune	2	1

*Below one rating

Source: A. C. Nielsen, February, 1987

SYNDEX
DUPLICATED PROGRAMMING ANALYSIS

HOME MARKET	MARKET RANK	% CABLE PENE.	IMPORTED SIGNAL	DUPLICATED PROGRAM	IMPORTED SIGNAL RTG IN HOME MKT	
					CABLE HH	TOTAL HH
Fort Wayne	102	41.2	WTBS	Andy Griffith	1	1
				Beverly Hillbillies	1	1
			WGN	Andy Griffith	1	*
				Cisco Kid	2	1
				Facts of Life	4	2
				Falcon Crest	1	*
				G. I. Joe	3	1
				JEM	2	1
				Leave It To Beaver	1	*
				Puttin' on the Hits	3	1
			WTTV	Different Strokes	1	*
				Facts of Life	1	*
				G. I. Joe	1	*
				Leave It To Beaver	1	*
				Mama's Family	2	1

*Below one rating point

Source: A. C. Nielsen, February, 1987

Phase IV: Movie Title Duplication

Another important aspect of the syndicated exclusivity issue is the duplication of movie titles by imported signals. Distant signal duplication of exclusive movie titles is very harmful to local stations. The effect with respect to big movie titles is particularly harmful. Considerable time and money is spent scheduling and promoting popular movie titles. I am aware of several situations in which local stations were unaware that a distant signal was to air a movie for which the local station had purchased market exclusivity. Some duplicative movie titles air the same night as the local station's telecast and begin an hour earlier.

Logistically, it is difficult to trace numerous movie titles and determine their ratings on imported signals. I was, however, able to uncover two recent examples. In May, 1987 KRIV Houston aired "A Fistfull of Dollars" one evening from 8-10 PM. According to Nielsen, KRIV achieved a rounded eight rating with the movie. "A Fistfull of Dollars" also came into the market on WGN on the same night and drew two cable household and one television household rating point away from KRIV. Had KRIV earned that additional television household rating point, it would have out-performed the ABC affiliate, a powerful marketing statement for an independent.

KBHK San Francisco, the number five ranked television market, had a similar problem in May. KTXL, an adjacent market independent, duplicated two popular movie titles on the same night that KBHK aired them. The titles were "The Woman In Red" and "Conan, The Destroyer," both premium movies. KTXL's telecasts of each movie earned two cable household and one television household rating points. Audience diversion of that magnitude is extremely detrimental in a major market like San Francisco. From a financial standpoint, it is important to remember that even one rating point in San Francisco represents considerable revenue. The duplicative movie title problem is compounded by the fact that many premium titles are sold in packages which must air on the same night in each market that purchases them.

CONCLUSION

In summary, the preceding analyses unquestionably present evidence that in many markets, programming duplicated by cable imported signals does draw viewership to those programs out of the market. The extent to which local stations are harmed is dependent upon several factors including cable penetration, number of systems carrying an imported signal and the number of homes subscribing to those systems, maturity of local stations, popularity of the duplicated program, etc. More important than categorizing and measuring each effect is the understanding that based on the variety of markets analyzed, the lack of syndicated exclusivity is harmful in many market situations. Financially, a single rating point is very valuable in a large market. In the case of many smaller markets, newer independents in particular cannot afford to lose program audience to imported signals. Some examples cited revealed higher program ratings for shows duplicated by imported signals than the independent's average, even in key dayparts.

Cable household ratings for duplicated programming achieved by imported signals are essential to an insight into the future of local market television unprotected by syndicated exclusivity. As cable penetration increases, duplicated programs can be expected to achieve the same rating levels achieved in currently cabled homes. More viewers to duplicative imported signal programming means more harm to local stations that have purchased the programming. Station advertising sales are obviously based on total television households (or persons), but when cable penetration reaches high levels, the gap between cable and all television households is almost insignificant. Such duplication of a television's "exclusive" programming, and the consequent diversion of viewers of that programming from the local station make the local station's marketing, promotion and advertising sales decisions very difficult.

Thirty-four INTV member stations have catalogued 682 examples of locally owned programs and 181 movie titles and/or packages duplicated by imported signals. A detailed list is attached. All indications are that most of those 34 stations suffer damage similar to that described in this study.

DISTANT SIGNAL PROGRAM DUPLICATION SURVEY

MARKET	STATION	DUPLICATED PROGRAMMING
Phoenix	KUTP	Superman
		At the Movies
		Merrill's Marauders
		Road to Singapore
		Jem
		Bewitched
		Ghostbusters
		Smurfs
		Jeannie
		Dial M For Murder
		Sanford & Sons
		Welcome Back Kotter
		Scooby Doo
		Yor, Hunter From the Future
		Rio Bravo
		Killer By Night
		Dirty Dingus Magee
		Band of Angels
		Rafferty & the Gold Dust Twins
Tampa	WFTS	Mask
		Beverly Hillbillies
		Odd Couple
		Hogan's Heroes
		Facts of Life
		Jeannie
		Bewitched
		I Love Lucy
		Sanford & Sons
		Honeymooners
		Carol Burnett
Columbus, Ohio	WTTE	Andy Griffith Show
		Barney Miller
		Black Sheep Squadron
		Carol Burnett and Friends
		The Brady Bunch
		GI Joe
		Galaxy Rangers
		Hawaii Five-O
		Hogan's Heroes
		Honeymooners
		I Love Lucy
		My Little Pony
		The Odd Couple
		Smurf's Adventures
		Star Trek

Page 2

MARKET	STATION	DUPLICATED PROGRAMMING
Columbus, Ohio (cont'd)	WTTE	Transformers
		Twilight Zone
		INN News
		Movies:
		Continental Divide
		Come Back to the 5 and Dime
		Captain Blood
		Conan the Destroyer
Milwaukee	WVTV	Andy Griffith
		Benny Hill Show
		Bugs Bunny
		Charles In Charge
		Defenders of the Universe
		Diff'rent Strokes
		Flintstones
		Funtastic World of Hanna Barbera
		Gimme A Break
		Gobots
		Hogan's Heroes
		I Dream of Jeannie
		JEM
		Leave It To Beaver
		Lifestyles of the Rich & Famous
		Love Boat
		Mama's Family
		Munsters
		One Big Family
		Star Search
		Superman
		Three's Company
		Tom & Jerry
		Woody Woodpecker
		Movie Packages:
		Abbott & Costello
		MGM-1
		Universal Horror Greats
		Paramount Portfolio IV
		Embassy Night at Movie
		Warner TV-1
		Century 11
		Century 9
		Tarzan
		Universal 100
		NTA
		Fries Frame 1
		Columbia 21
		Prime One (MGM)

MARKET	STATION	DUPLICATED PROGRAMMING
Jefferson City, MO (Columbia)	KNLJ	Little House On the Prairie
Houston	KTXH	Tales From the Darkside Transformers Leave It To Beaver Ghostbusters Heathcliff What A Country Puttin' On the Hits Fame Beverly Hillbillies The Honeymooners Gimme Me A Break [plus "exclusive movie contracts" sometimes broadcast the exact movie at exact time]
Roanoke/Lynchburg	WJPR	Flintstpnes Silverhawks Defenders of the Earth My Little Pony Bewitched I Dream of Jeannie He-Man GI Joe Thundercats Taxi Mission Impossible The Flintstones Scooby Doo My Little Pony Disney Movie Showcase Lifestyles of the Rich & Famous Defenders Dennis the Menace Ghostbusters She-Ra He-Man Galaxy Rangers WKRP in Cincinnati The Jeffersons America's Top Ten LaVerne & Shirley Transformers What's Happening Now Ask Dr. Ruth

MARKET	STATION	DUPLICATED PROGRAMMING
Seattle	KTZZ	I Dream of Jeannie
		Gunsmoke
		Chips
		He-Man
		Check It Out
		Perry Mason
		Wanted--Dead or Alive
		Father Knows Best
		Dennis the Menace
		Flintstones
		Burns & Allen
		My Three Sons
		Best of Groucho
		The Honeymooners
		The Jack Benny Program
		Beverly Hillbillies
Tulsa	KOKI (Programs duplicated in six years since repeal of syndicated exclusivity)	Perry Mason
		Dukes of Hazzard
		Chips Patrol
		Charlies Angels
		Big Valley
		Trapper John
		Little House On The Prairie
		Carol Burnett
		The Real McCoys
		Superfriends
		At the Movies
		Star Search
		Lifestyles of the Rich & Famous
		Munsters
		Sha-na-na
		He Man
		She-Ra
		GI Joe
		Saturday Night Live
		Soul Train
		Smurfs
		Silverhawks
		JEM
		America's Top Ten
		Grizzly Adams
		Tarzan
		Honeymooners
		Solid Gold
		Bewitched
		Viacom TV Net
		20th Century Fox Net
		Orbis Net
		Flying Nun

MARKET	STATION	DUPLICATED PROGRAMMING
Tulsa (cont'd)	KOKI	What A Country Twilight Zone Galaxy Rangers Tom & Jerry My Little Pony Buck Rogers Battlestar Galactica Hogan's Heroes Benny Hill 20 Minute Workout Dream Girl USA Gilligan's Island Pink Panther Flintstones Rawhide Independent Network News
Atlanta	WATL	Hawaii Five-O Cannon Abbott & Costello Bosom Buddlies New Gidget The Insiders The Saint & Return of the Saint Zoobilee Zoo My Favorite Martian 700 Club Oral Roberts WWF Vegas Bugs Bunny Porky Pig Cannon Wild, Wild West Superman Lone Rangers Kung Fu [Feature packages duplicated-movies: Story of Jacob & Joseph Fantastic Voyage Legend of Hell House Les Miserables Lost World Angel & The Badman Little Miss Marker Battle of Britain Ben Hur

MARKET	STATION	DUPLICATED PROGRAMMING
Atlanta (cont'd)	WATL	Holocaust 2000
		El Dorado
		Bad News Bears Brkg Training
		Big Fisherman/Bundle of Joy
		The Bees
		All Tarzan Features
		Porky's II
		Merrill's Marauders
		Who Was That Lady
		The Betsy
		Captain America 1&2
		Advance To The Rear
		Man-Eaters Are Loose
		Martin Chronicles
		Hell Night
		Just Before Dawn
		The Paleface
Minneapolis	KITN	Charles In Charge
		It's A Living
		Porky Pig
		Bugs Bunny
		Beverly Hillbillies
		Hogan's Heroes
		Dick Van Dyke
		Leave It To Beaver
		Ghostbusters
		WKRP In Cincinnati
		Barney Miller
		Honeymooners
		Perry Mason
Philadelphia	WPHL	One Big Family
		Jeffersons
		Munsters
		Sanford & Sons
		Galaxy Rangers
		Ghostbusters
		Alice
		It's A Living
		Mama's Family
		Return of the Saint
		Popeye
		9 to 5
		Flintstones
		Brady Bunch
		Leave It To Beaver
		Facts of Life
		WKRP In Cincinnati
		Hogan's Heroes
		Barney Miller

MARKET	STATION	DUPLICATED PROGRAMMING
Oklahoma City	KGMC	Gunsmoke
		Charles In Charge
		Bugs Bunny
		Cisco Kid
		Jerry Falwell
		Hawaii 5-0
		Ask Dr. Ruth
		Muppets
		Galaxy Rangers
		My Little Pony
		Ghostbusters
		Scooby Doo
		Flintstones
		Transformers
		Sanford & Sons
		Bizarre
		Benny Hill
		Movies:
		The Gun and The Nun
		Secrets of Three Hungry Wives
		Adios Sabata
		The Brain
		The Desert Fox
		Come Back to the 5 and Dime Jimmy Dean, Jimmy Dean
		Return of the Pink Panther
		Conan The Destroyer
		The African Queen
		The Robe
		The Death of Ritchie
		All That Heaven Allows
		Golden Moment: An Olympic Love Story
		They Shoot Horses, Don't They?
		Bend Of The River
		The Detective
		Le Mans
		Five Masters of Death
		Spinout
		Against a Crooked Sky
		Charlie Varrick
		Little Miss Marker
Madison, WI	WMSN	Gobots
		Scooby Doo
		Smurfs
		I Dream of Jeannie
		Jetsons
		Leave It To Beaver
		Three's Company

MARKET	STATION	DUPLICATED PROGRAMMING
Madison, WI (cont'd)	WMSN	It's Your Business
		Munsters
		Addams Family
		Andy Griffith
		Dance Fever
		Solid Gold
		Star Search
		Puttin' On The Hits
		JEM
		Transformers
		Benny Hill
		Fame
		Tales Darkside
		At the Movies
		Mask
		Heathctiff
		Odd Couple
		Twilight Zone
		Dick Van Dyke
Grand Rapids, MI	WXMI	Hold That Dream
		Halloween II
		Sgt. Pepper's Lonely Hearts Club Band
		The Man Who Knew Too Much
		War Games
		Road Games
		Blues Brothers
		Ford: The Man & The Machine
		Conan The Destroyer
		Missing In Action
		Revenge Of The Nerds
		Red Dawn
		Losin' It
		Sea Hawk
		Gunsmoke
		I Dream of Jeannie
		Scooby Doo
		Gilligan's Island
		It's Your Business
		Lady Lovelylocks (anim.)
		Popples
		Get Along Gang
		Star Search
		Chips
		Thundercats
		My Little Pony
		Little House On The Prairie
		I Love Lucy

MARKET	STATION	DUPLICATED PROGRAMMING
Grand Rapids, MI (cont'd)	WXMI	Brady Bunch Ghostbusters Silverhawks GI Joe Charles In Charge MASK Jeffersons
Davenport, Iowa (Quad Cities)	KLJB	The Honeymooners GI Joe Embassy Nite At The Movies Operation Prime Time Ask Dr. Ruth
Baltimore	WNUV	Bewitched Jeannie Flintstones 100,000 Pyramid 1,000,000 Chance of A Lifetime New Gidget Mask Charles In Charge At The Movies
Kansas City, MO	KZKC	Sanford & Sons Honeymooners Mask Heathcliff The Odd Couple Transformers GI Joe Welcome Back Kotter INN News Thundercats Charles In Charge JEM
San Antonio, TX	KRRT	Mask Scooby Doo Bewitched I Dream of Jeannie Bugs Bunny & Friends Smurfs GI Joe Facts of Life

MARKET	STATION	DUPLICATED PROGRAMMING
San Antonio, TX (cont'd)	KRRT	Gunsmoke
		The Honeymooners
		JEM
		Andy Griffith
		Laredo
		Rawhide
		Bonanza
		Six Gun Theatre
		The New Gidget
		Saturday Night Shocker
		Abbott & Costello
Fort Wayne, IN	WFFT	Brady Bunch
		Dennis The Menace - Cartoon
		Geraldo Rivera Specials
		GI Joe - Strip and Movie Specials
		Inhumanoids
		It's A Living
		It's Your Business
		JEM
		Little House On The Prairie
		Mama's Family
		One Big Family
		700 Club
		Silverhawks
		Smurf's Adventures
		Telepictures Animated Holiday Specials
		Andy Griffith
		Charles In Charge
		Cisco Kid
		Leave It To Beaver
		Muppet Show
		Bewitched
		Scooby Doo
		Transformers
		Twilight Zone
		Lorimar I - Movie Package
		MGM Eleven - Movie Package
		MGM/UA #2 - Movie Package
		SFM Holiday Network - Movie Packa
		Viacom TV Net - Movie Package
		Warner Brothers Volume 23 - Movie
		Embassy Night At the Movies
		MGM/UA Premiere Network
		Orbis Platinum 193 - Movie pkg.
		Twentieth Century Fox- Super 66 Movie Package

MARKET	STATION	DUPLICATED PROGRAMMING
Fort Wayne, IN (cont'd)	WFFT	Lorimar Deja Views - Movie Package
		Paramount Portfolio VI - Movie pkg.
		Viacom Features II - Movie Package
Kansas City, MO	KSHB	Beverly Hillbillies
		Twilight Zone
		Dick Van Dyke
		Andy Griffith
		Leave It To Beaver
		Bugs Bunny
		Smurfs Adventures
		Facts of Life
		WKRP in Cincinnati
		Barney Miller
		Alfred Hitchcock
		My Three Sons
		Innocence Lost
		One Day At A Time
		The Lucy Show
		Tom & Jerry
		One Big Family
		Bosom Buddies
		Solid Gold
		Explorer
		Eight Is Enough
		It's A Living
		Laverne & Shirley
		Cisco Kid
		Puttin' On The Hits
		Throb
		Tales From The Darkside
		Lou Grant
		Movies:
		Crash
		Blood Alley
		Here Comes Mr. Jordan
		Butch & Sundance: The Early Years
		Little Miss Marker
		Wake Island
		The Iron Mistress
		Young Man With A Horn
		Tom Sawyer
		Bend of the River
		Just Tell Me You Love Me

MARKET	STATION	DUPLICATED PROGRAMMING
Greensboro, NC	WGGT	Monday-Friday - 10 programs dup Weekends - 6 programs duplicated
St. Louis	KDNL	Benson Fantasy Island Leave It to Beaver Addams Family Munsters Good Times Sanford & Sons American Ceasar Andy Griffith Gomer Pyle I Love Lucy Perry Mason UWF Wrestling World Class Championship Wrestling Check It Out One Big Family It's A Living Soul Train Charles In Charge Flintstones Danger Mouse Mask Heathcliff Ghostbusters Transformers Movie Packages: New World I Warner Vol. 20 & 22 Universal 123 Columbia Gems Columbia Vol. 4 MCA Debut Network Hal Roach Colorization Network Viacom Vol. 7, 8 Most Wanted List Deja Views Vintage I Warner Vol. 18 MGM/UA Premier Network
Cleveland	WUAB	Tom & Jerry Scooby Doo Flintstones Leave It To Beaver Sanford & Son

MARKET	STATION	DUPLICATED PROGRAMMING
Cleveland (cont'd)	WUAB	Mama's Family
		Benny Hill
		Oral Roberts
		Buck Rogers
		Romper Room
		Magnum P.I.
Anchorage, AK	KTBY	Abbott & Costello
		Andy Griffith
		Cannon
		Flintstones
		GI Joe
		Gilligan's Island
		Gunsmoke
		Hawaii 5-0
		Hogan's Heroes
		Honeymooners
		House Calls
		I Dream of Jeannie
		Lassie
		Lone Ranger
		MTV Video Countdown
		Paramount Portfolio II
		Partridge Family
		Rawhide
		Rifleman
		Transformers
		Twilight Zone
Hartford, CT	WHCT	Children's Cinema Classics
		Carson Anniversay Specials
		Carson's Comedy Classics
		Police Story
		Blue Knight
		Bomba Movies
		Dallas
		Deja Views (Lorimar)
		Sci-Fi Movies (Lorimar)
		22 Karat (Lorimar)
		Greatest American Hero
		Cowboys and Indians (Lorimar)
		Record Guide
		Charles In Charge
		Banacek
		Name of the Game
		MCA Movies (Various)
		It Takes A Thief

MARKET	STATION	DUPLICATED PROGRAMMING
Hartford, CT (cont'd)	WHCT	Mystery Movies (MCA)
		War Chronicles
		Best of Saturday Night
		Twenty-Minute Workout
		Cagney & Lacey
		Brady Bunch
		Odd Couple
		Mission Impossible
		Untouchables Avengers
		Portfolio III & IV & V
		Goldwyn Gold (Samuel Goldwyn)
		Treasure Chest (Samuel Goldwyn)
		Dimension (Satori)
		My Favorite Martian
		Chiefs
		Spider-Man Movies
		Teleworld Features
		Dempsey & Makepeace
		CNN Headline News
		Josie & The Pussycats
		Tales of the Unexpected
		Zoobilee Zoo
		Cover Story
		Ghost Story
		Tennessee Tuxedo Essence
		NWA Southern Professional Wrestling
		NWA Pro Wrestling
		International Championship Wrestling
		Four Star Movies (Various)
		Kingworld Features (Various)
		NTA Films (Various)
		The New Hot Tracks
		Space 1999
		Fox I, II, & III
Syracuse, NY	WSYT	Beaver
		Bewitched
		Bosom Buddies
		Buck Rogers
		Charles In Charge
		Favorite Martian
		Flintstones
		Ford Special
		GI Joe
		G.L.O.W.
		Gobots

MARKET	STATION	DUPLICATED PROGRAMMING
Syracuse, NY (cont'd)	WSYT	Heathcliff
		I Dream of Jeannie
		Lifestyles of The Rich & Famous
		Mama's Family
		Runaway With the Rich & Famous
		Scooby Doo
		Smurfs
		Star Trek
		Tales of the Unexpected
		Transformers
		Twilight Zone
		Zoobilee Zoo
Indianapolis	WXIN	Porky Pig
		Flintstones
		Bewitched
		Gilligan's Island
		Beverly Hillbillies
		I Love Lucy
		Dick Van Dyke
		Bugs Bunny
		Twilight Zone
		Charles In Charge
		Ghostbusters
		Transformers
		Andy Griffith
		Pro Wrestling
		Puttin On The Hits
		Hogan's Heroes
		Tales of the Darkside
Greenville, SC	WHNS	Muppets
		Tom & Jerry
		Leave It To Beaver
		Ghostbusters
		Scooby Doo
		Hillbillies
		Facts of Life
		Cartoon Express
		Barney Miller
Hilton Head, SC	WTGS	Movies
		Syndicated Programs

MARKET	STATION	DUPLICATED PROGRAMMING
St. Petersburg, FL	WTOG	Porky Pig Bugs Bunny Jem Cisco Kid Lone Ranger Barney Miller Jeffersons Transformers WKRP Night Court Cheers Laurel & Hardy It's A Living Mama's Family Silver Spoons Kate & Allie Tom & Jerry I Dream of Jeannie Bewitched Perry Mason Flintstones Adams Family
Nampa, ID	KTRV	Wide World of Animals Bewitched I Love Lucy Beverly Hillbillies Hogan's Heroes Leave It To Beaver Smurfs GI Joe Transformers Facts of Life Big Valley WKRP In Cincinnati Honeymooners Jeffersons Wild, Wild, West Gunsmoke
St. Louis	KPLR	Facts of Life WKRP In Cincinnati SOAP Little House On The Prairie Love Boat Private Benjamin Honeymooners (old & new) Twilight Zone

MARKET	STATION	DUPLICATED PROGRAMMING
St. Louis (cont'd)	KPLR	Bob Newhart
		Beverly Hillbillies
		Muppets
		Fame
		Puttin' On The Hits
		Tales From the Darkside
		Lifestyles of the Rich & Famous
		Superman
		Lone Ranger
		Hogan's Heroes
		Gilligan's Island
		Scooby Doo
		Porky Pig
		Bugs Bunny
		Tom & Jerry
		Feature Film Packages duplicated:
		MCA World Premieres
		MCA Grand 50
		MCA Hitlist
		MCA Universal 33
		MGM Warner Pre '48s
		MGM RKO Features
		MGM MGM Pre '48s
		MGM Lion I & II
		MGM That's Entertainment
		MGM Family Fair
		MGM II
		Paramount Portfolio III, V, X, X
		TCF Century X
		TCF Porky's Trilogy
		Viacom Explitables
		Viacom Volume XI, II, XI
		Warner Tarzan Features
		Warner Vol. 20, 21A, 22, 25, 26.
		Warner Statlight 6
		ITC Vol. III & IV
		Operation Prime Time Specials
		Embassy Night at the Movies Spec
		Viacom TV Net Premieres
Miami-Ft. Lauderdale	WDZL	Gunsmoke
		Wild Wild West
		Father Murphy
		It's A Living
		One Big Family
		Mama's Family
		700 Club
		Tales From the Darkside
		Shalom Show

MARKET	STATION	DUPLICATED PROGRAMMING
Miami-Ft. Lauderdale (cont'd)	WDZL	Inside Fla. Golf Monkees Value TV Thundercats Silverhawks I Dream of Jeannie Zoobilee Zoo Partridge Family Perry Mason Twilight Zone Flintstones Gilligan's Island Night Gallery

**Butterfield
Communications
Group**
87 Blanchard Road
Cambridge,
Massachusetts 02138
Telephone (617) 354-2227

APPENDIX C

THE ECONOMIC IMPACT ON HOME-MARKET TELEVISION STATIONS OF THE DUPLICATION OF SYNDICATED PROGRAMS BY CABLE TELEVISION SYSTEMS

At the request of the Association of Independent Television Stations, Inc., Butterfield Communications Group, a management consulting firm specializing in broadcast industry assignments, has prepared the following analysis of the economic impact on home-market television stations of duplication of their programs on cable-delivered distant signals. The analysis develops a considerable body of evidence that duplication of home-market signals generates significant economic harm to home-market television stations, particularly independent stations in middle and smaller markets.

Viewership plays a crucial role in the income of commercial television stations. The prices of commercial announcements are directly related to the number of potential customers who view those spots. Larger audiences bring in more advertising revenues, and any factor which reduces audience size necessarily causes the stations financial harm.

Audience research indicates that the audience for a home-market station's program is reduced when the same program, broadcast by a station in a distant market, is imported and made available to viewers by cable television operators. The result is a loss of audience and revenues for the home-market station, which has purchased exclusive rights to the program in the expectation that it will attract the largest possible audiences and generate saleable ratings.

Assessing the economic damage suffered by home-market stations due to this duplication is not a simple undertaking. However, based on market-by-market audience viewing data, national ratings data for syndicated programs, and prevailing commercial rates in the markets affected by importation, we can project the extent to which such damage occurs.

An INTV Research Department report, prepared by Susan Rynn, has quantified the rating points lost by a large selection of home-market broadcasters to the same programs imported from outside the market by cable operators. Our efforts take these conclusions one step further by assessing the actual economic losses suffered as a result of these lower ratings.

In Chart 1, we have selected approximately 40 examples of cable-duplicated programming where the duplication has a significant impact on home-market stations. In these examples, the imported program runs either head-to-head with the home-market broadcast or in the time slot immediately preceding it. Frequently, identical episodes of the same program run on both cable and home-market channels each day. Also, the majority of the markets examined are characterized by a fairly high degree of cable penetration.

While we might expect these examples to show a significant audience loss by the home-market program to the imported program, it is not a certainty that every viewer gained by the imported program would represent a loss to the home-market program. That is to say, not every rating point of the imported program would necessarily be added to the home-market program were the import not available. Some viewers might choose to watch another program shown in place of the imported duplicate. In other cases, where the programs are not competing head-to-head, some viewers may already be watching both shows, and the removal of the import would not add viewers to the home-market broadcast.

Without additional audience research, it is difficult to precisely estimate the proportion of viewers of the imported signal who would watch the home-market broadcast in the absence of the import. The comparison of ratings for duplicated programs to national averages for those programs which follows suggests the proportion is quite high, approaching 100 percent. For the purposes of this analysis we have assumed that 80 percent of the viewers of the import would switch to the home-market broadcast were the import unavailable.

The charts begin with estimates of viewers lost to imported duplicate programming (drawn from the earlier INTV research), and then translates those ratings losses into dollar losses resulting from this duplication.

Chart 1 contains selected program duplications. The chart contains the following information:

Columns 1-3:	Identify the market, program, and the home-market station.
Column 4:	Lists the days and times at which the program is broadcast by the home-market station.
Column 5:	HM HH RTG -- Provides the household rating earned by the broadcast.
Column 6:	CABLE PENETR -- lists the percentage of TV households with cable.

The next four columns describe the source, timing, and audience impact of the imported duplicate program.

Columns 7-8:	IMPORTED SIGNAL DAY & TIME -- Lists the call letters of the imported station which carries the show, and the show's time period.
Columns 9-10:	IMPORT RTG:CAB HH/TOT HH -- List the ratings the show earns among cable households and total market households respectively.
Column 11:	CPP -- Lists the prevailing price paid per household rating point for a 30-second commercial in the affected market.

	These prices vary by market size, location, and time of broadcast.
Column 12:	TOT :30s -- The number of 30-second commercials likely to be contained in the home-market station's broadcast of the program.
Column 13:	BRTR :30s -- The number of commercials held back by syndicators for sale to national advertisers, and thus unavailable for sale by local stations. About half the programs examined have two or more commercials held back for sale to national advertisers.
Column 14:	SHOWS/YEAR -- The number of times the home-market station broadcasts the show each year.
Column 15:	DSCNT FCTR -- The discount factor of 80% applied to the calculation to reflect the likelihood that not all viewers of the import are necessarily losses to the home-market program.
Column 16:	DOLLAR IMPACT -- Gives our estimate of the annual loss a home-market station suffers due to the cable system's carriage of the duplicate program. It is the product of the number of revenue producing spots (TOT :30's less BARTER :30's) times the imported program's ratings points (IMPORT RTG TOT HH), times the cost per ratings point (CPP), times the number of shows per year (SHOWS/YEAR).

Thus, DOLLAR IMPACT is equal to:

(TOT :30'S - BARTER :30's) x (CPP) x (RTG TOT HH) x (SHOWS/YEAR) x (DSCNT FCTR)

or

(NET AVAILABLE SPOTS) x (DOLLARS/POINT) x (POINTS) x (SHOWINGS/YEAR) x (80%)

The example on the first line of Chart 1, *G. I. Joe* in Albany, shows an annual loss for WXXA of $43,680 per year, calculated in the following manner:

(12 total spots - 5 barter) x ($30/point) x (1 point) x (260 shows/year) x (.8)

An additional analysis was conducted to determine the relative audience losses to home-market stations caused by imported program duplication. Chart 2 compares the ratings performance of a selection of the home-market broadcasts listed in Chart 1 with the average national rating reported by Arbitron for the program when aired in the same daypart in the same month and year in markets with the same number of stations. Of the chart's 22 cases where a home-market program is duplicated by an imported program, there are only four occurrences where the home-market broadcast performs as well as or better than the national average of broadcasts of the same program at the same time in similar markets (i.e., where the "LOCAL SHORTFALL" is zero).

In 18 cases, the home-market broadcast underperforms when compared to the national average. In every one of the 18 cases, the ratings of the imported duplicate program were equal to or less than the shortfall of the home-market broadcast relative to average performance. In effect, if the ratings of the imported duplicate program are added to those of the home-market broadcast, the result is equal to or slightly below the expected performance based on the national averages. The data imply strongly that there has occurred a one-for-one loss of viewing by the home-market station to the imported duplicate program.

Several points should be highlighted with respect to the outcome of the analysis. First, only a limited selection of programs, chosen from the INTV Research Department report, is examined in this paper. The aggregate dollar impact of program duplication on any station in the sample is far greater than the total resulting from the one or two instances noted. The aggregate dollar impact on the markets is also far higher than that suggested by the several cases of duplication discussed in our limited sample of markets. In addition, of course, the aggregate dollar impact of duplication on a national basis is several orders of magnitude greater than the amounts suggested here for any individual station or market.

Second, the economic impact of program duplication will increase over time as cable penetration rises. In the examples noted in Chart 2, the largest home-market program ratings shortfalls generally occur in the markets with the highest cable penetration, and the smallest shortfalls are clustered in the markets with lower penetration. There is no mathematical reason to expect this pattern to reverse itself.

Third, the dollar impact of program duplication is not limited only to the duplicated program. Exhaustive audience research has shown that viewers' channel selections effect not simply the program they tune to, but the programs which they view at later time periods. If a given program has large audiences, then the program which follows it (its "lead-out") will have a considerable competitive advantage because of the audience delivered, as it were, to its "front door." Competing programs will face the problem of diverting those viewers to themselves. The implication of the "lead-out" effect is that home-market stations which lose audience because their programs are duplicated on cable-imported stations will face additional audience and dollar shortfalls for programs later in their schedule.

Finally, it is useful to examine the dollar impact of program duplication in terms of the sales revenues, program budgets, and pre-tax profits of independent television stations. Independent stations provide the most appropriate comparison because the majority of the program duplication occurs between home-market independents and imported distant independents.

The annual dollar impacts estimated in Chart 1 range from $4,992 for a bartered weekly children's show, *The New Gidget*, in a moderately cabled market, Rochester, to $936,000 for a highly-rated non-bartered daily situation comedy, *Facts of Life*, in a highly-cabled market, San Diego. The average projected dollar impact is $135,477.

This figure can be compared to the sales revenues, program budgets, and pre-tax profits reported by independent stations in the National Association of Broadcasters 1986 Television Financial Survey (1985 data).

1985 Independent Station Reports ($ thousands)

	All Mrkts	Mrkts 11-20	Mrkts 21-40	Mrkts 81+
Sales Revenues	$15,683	$16,654	$9,650	$4,669
Program/Product.	5,589	6,151	3,355	1,423
Pre-Tax Profit	1,746	1,455	(632)	(313)

The obvious inference arising from the comparison is that the projected dollar impact of program duplication is extremely critical, particularly to independent stations in markets outside the top 10. The average impact projected above is equal to one-tenth of the pre-tax profits of the average station in markets 11-20. The highest projected dollar impact was equal to 64% of the pre-tax profits of the same station. The total of six estimated dollar impacts for San Diego exceeds the average pre-tax profit for independent stations in markets 11-20 by a factor of 2, and as mentioned before, the aggregate impact on the market will be far larger than the total of the examples examined in this analysis.

Overall, our analysis demonstrates that independent television stations suffer substantial economic injury from the audience and sales revenue losses which arise when cable television systems import programs which duplicate their own.

* * *

Butterfield Communications Group has, in its ten-year history, acquired extensive experience in broadcast finance and operations. In the course of providing management and marketing counsel to a large number of television stations and group owners, BCG has developed particular skills in charting and forecasting broadcast revenues. BCG has carried out feasibility studies of the acquisition of television stations for several investment banking firms, and evaluated the viability of establishing new stations in larger markets.

A small sample of current and past BCG clients includes ABC, Blair Television, Capital Cities Communications, Tribune Broadcasting Company, Cox Communications, Lee Enterprises, Susquehanna Broadcasting, Metromedia Television, Petry Television, Inc., the Washington Post Company, and Westinghouse Broadcasting, as well as the Association of Independent Television Stations, Inc., Boston Ventures Management, the National Association of Broadcasters, and the Television Bureau of Canada.

Chart 1: Selected Program Duplications

HOME MARKET	DUPLICATED PROGRAM	STA.	HOME MARKET DAY&TIME	HM HH RTG	% CABL PENETR	IMPORTED SIGNAL	DAY&TIME	IMPORT RTG CAB HH	TOT HH	CPP	TOT :30s	BRTR :30s	SHOWS /YEAR	DSCNT FCTR	DOLLAR IMPACT
ALBANY, NY	G.I. JOE	WXXA	M-F/4:30P	2	50.9	WPIX	M-F/4:00P	1	1	30	12	5	260	0.8	43680
ALBANY, NY	SMURFS	WXXA	M-F/3:30P	2	50.9	WPIX	M-F/3:00P	1	1	30	12	5	260	0.8	43680
ALBANY, NY	GIMME A BREAK	WXXA	M-F/6:30P	2	50.9	WPIX	M-F/6:00P	3	2	40	12	8	260	0.8	99840
BIRMINGHAM	THE FLINTSTONES	WNAL	M-F/4:00P	2	49.0	WTBS	M-F/3:30P	2	1	20	12	5	260	0.8	29120
CHAMP/SPRFLD	G.I. JOE	WRSP	M-F/4:30P	2	62.4	WGN	M-F/4:00P	2	1	30	12	5	260	0.8	43680
HARTFORD	BARNEY MILLER	WTXX	M-F/7:30P	8	70.3	WSBK	M-F/7:30P	1	1	100	12		260	0.8	249600
JOHNS/ALTOONA	IT'S A LIVING	WFAT	S/7:30P	1	54.2	WOR	S/7:00P	2	2	15	12	6	52	0.8	7488
JOHNS/ALTOONA	SMURFS	WFAT	M-F/3:30P	1	54.2	WPIX	M-F/3:00P	1	1	10	12	5	260	0.8	14560
JOHNS/ALTOONA	BOSOM BUDDIES	WWCP	SU/6:00P	2	54.2	WOR	S/6:00P	2	1	15	12		52	0.8	7488
JOHNS/ALTOONA	G.I. JOE	WWCP	M-F/4:30P	1	54.2	WPIX	M-F/4:00P	1	1	10	12	5	260	0.8	14560
MOBILE	TOM & JERRY	WJTC	M-F/2:30P	1	53.6	WTBS	M-F/9A&3P	1	1	25	12		260	0.8	62400
OMAHA	FACTS OF LIFE	KPTM	M-F/5:30P	10	54.1	WGN	M-F/5:00P	2	1	40	12		260	0.8	99840
PEORIA	G.I. JOE	WYZZ	M-F/4:30P	2	57.5	WGN	M-F/4:00P	1	1	20	12	5	260	0.8	29120
PROVIDENCE	MAMA'S FAMILY	WNAC	S/7:30P	2	55.2	WSBK	S/6:30P	4	2	30	12	6	52	0.8	14976
RICHMOND	BEVERLY HILLBILLY	WVRN	M-F/6:00P	1	45.2	WTBS	T-F/6:00P	1	1	30	12		260	0.8	74880
RICHMOND	SANFORD & SON	WRLH	M-F/7:30P	3	45.2	WTBS	M-F/7:00P	3	1	30	12		260	0.8	74880
RICHMOND	ANDY GRIFFITH	WVRN	M-F/6:30P	2	45.2	WTBS	M-F/6:30P	1	1	30	12		260	0.8	74880
ROCHESTER	ENTERTAIN TONIGHT	WUHF	M-F/7:30P	4	54.2	WOR	M-F/7:30P	1	1	30	12	2	260	0.8	62400
ROCHESTER	THE NEW GIDGET	WUHF	SU/1:30p	1	54.2	WOR	SU/11:00A	2	1	20	12	6	52	0.8	4992
ROCHESTER	G.I. JOE	WUHF	M-F/4:00P	3	54.2	WPIX	M-F/4:00P	1	1	50	12	5	260	0.8	72800
ROCKFORD	THE JEFFERSONS	WQRF	M-F/6:30P	2	57.8	WGN	M-F/6:30P	2	1	50	12		260	0.8	124800
TRI-CITIES	GILLIGAN'S ISLAND	WETO	M-F/5:30P	2	55.5	WTBS	M-F/5:00P	5	4	13	12		260	0.8	129792
INDIANAPOLIS	FACTS OF LIFE	WTTV	M-F/6:00P	7	51.8	WGN	M-F/5:00P	1	1	60	12	0	260	0.8	149760
INDIANAPOLIS	GI JOE	WTTV	M-F/4:30P	3	51.8	WGN	M-F/4:00P	1	1	35	12	5	260	0.8	50960
INDIANAPOLIS	SMURFS	WTTV	M-F/3:30P	1	51.8	WGN	M-F/3:30P	1	1	35	12	5	260	0.8	50960
INDIANAPOLIS	THE JEFFERSONS	WTTV	M-F/7:30P	6	51.8	WGN	M-F/6:30P	2	1	60	12	0	260	0.8	149760
INDIANAPOLIS	WKRP IN CINN.	WTHR	M-F/5:30P	6	51.8	WGN	M-F/5:30P	3	2	48	12	0	260	0.8	239616
MILWAUKEE	CHARLES IN CHARGE	WVTV	S/6:00P	3	42.1	WGN	S/5:00P	1	1	50	12	6	52	0.8	12480
MILWAUKEE	FACTS OF LIFE	WVTV	M-F/6:30P	5	42.1	WGN	M-F/5:00P	1	1	50	12	0	260	0.8	124800
ROANOKE	ANDY GRIFFITH	WDBJ	M-F/5:30P	14	52.8	WFMY	M-F/5:30P	2	2	45	12	0	260	0.8	224640
ROANOKE	ENTERTAIN TONIGHT	WSET	M-F/7:00P	11	52.8	WXII	M-F/7:00P	1	1	30	12	2	260	0.8	62400
ROANOKE	JEOPARDY	WDBJ	M-F/7:30P	22	52.8	WGHP	M-F/7:30P	2	1	30	12	2	260	0.8	62400
ROANOKE	SILVERHAWKS	WJPR	M-F/9:00A	0	52.8	WGN	M-F/7:30A	1	1	30	12	5	260	0.8	43680
ROANOKE	THREE'S COMPANY	WSET	M-F/7:30P	15	52.8	WGHP	M-F/5:30	3	2	50	12	0	260	0.8	249600
ROANOKE	WHEEL OF FORTUNE	WDBJ	M-F/7:00P	25	52.8	WGHP	M-F/7:00P	2	1	50	12	2	260	0.8	104000
SAN DIEGO	EMERGENCY	KTTY	M-F/3:00P	1	67.1	KTLA	M-F/2:00P	1	1	100	24	0	260	0.8	499200
SAN DIEGO	ENTERTAIN TONIGHT	KGTV	M-F/7:30P	6	67.1	KCOP	M-F/7:00P	1	1	125	12	2	260	0.8	260000
SAN DIEGO	FACTS OF LIFE	KUSI	M-F/6:00P	4	67.1	KTTV	M-F/5:00P	4	3	125	12	0	260	0.8	936000
SAN DIEGO	GIMME A BREAK	XETV	M-F/7:00P	3	67.1	KCOP	M-F/6:00P	2	2	125	12	0	260	0.8	624000
SAN DIEGO	LIL HSE ON PRAIRIE	KCST	S/4:00P	1	67.1	KTLA	M-F/4:00P	2	1	100	24	0	260	0.8	499200
SAN DIEGO	WHEEL OF FORTUNE	KCST	M-F/7:00P	13	67.1	KCOP	M-F/7:00P	4	3	125	12	2	260	0.8	780000

Nielsen Station Index, February, 1987

Chart 2: "Shortfall" Analysis

HOME MARKET	DUPLICATED PROGRAM	HOME MARKET STA.	HOME MARKET DAY&TIME	HM HH RTG	AVERAGE NATIONAL RATING	LOCAL SHORTFALL	IMPORT RATING
ALBANY, NY	G.I. JOE	WXXA	M-F/4:30P	2	3	1	1
ALBANY, NY	SMURFS	WXXA	M-F/3:30P	2	3	1	1
ALBANY, NY	GIMME A BREAK	WXXA	M-F/6:30P	2	6	4	2
BIRMINGHAM	THE FLINTSTONES	WNAL	M-F/4:00P	2	2	0	1
CHAMP/SPRFLD	G.I. JOE	WRSP	M-F/4:30P	2	3	1	1
HARTFORD	BARNEY MILLER	WTXX	M-F/7:30P	3	6	3	1
JOHNS/ALTOONA	IT'S A LIVING	WFAT	S/7:30P	1	4	3	2
JOHNS/ALTOONA	SMURFS	WFAT	M-F/3:30P	1	3	2	1
JOHNS/ALTOONA	BOSOM BUDDIES	WWCP	SU/6:00P	2	3	1	1
JOHNS/ALTOONA	G.I. JOE	WWCP	M-F/4:30P	1	3	2	1
MOBILE	TOM & JERRY	WJTC	M-F/2:30P	1	3	2	1
OMAHA	FACTS OF LIFE	KPTM	M-F/5:30P	10	7	-3	1
PEORIA	G.I. JOE	WYZZ	M-F/4:30P	2	3	1	1
PROVIDENCE	MAMA'S FAMILY	WNAC	S/7:30P	2	5	3	2
RICHMOND	BEVERLY HILLBILLY	WVRN	M-F/6:00P	1	2	1	1
RICHMOND	SANFORD & SON	WRLH	M-F/7:30P	3	5	2	1
RICHMOND	ANDY GRIFFITH	WVRN	M-F/6:30P	2	3	1	1
ROCHESTER	ENTERTAIN TONIGHT	WUHF	M-F/7:30P	4	8	4	1
ROCHESTER	THE NEW GIDGET	WUHF	SU/1:30p	1	2	1	1
ROCHESTER	G.I. JOE	WUHF	M-F/4:00P	3	3	0	1
ROCKFORD	THE JEFFERSONS	WQRF	M-F/6:30P	2	4	2	1
TRI-CITIES	GILLIGAN'S ISLAND	WETO	M-F/5:30P	2	2	0	4

APPENDIX D

July 2, 1987 THE WASHINGTON POST

p. B7

No NFL for Channels 5 or 20

16 Independents Excluded From Bidding on ESPN's Games

By Norman Chad
Washington Post Staff Writer

Sixteen independent television stations, including WTTG-TV-5 and WDCA-TV-20 in Washington, have been excluded from bidding for local market telecasts of ESPN's National Football League games, and independents are upset by the cable-sports network's decision.

In its three-year, $153 million deal with the NFL, ESPN agreed to sell rights to broadcast stations in the home and away markets of the games it is televising, enabling viewers without cable in those areas to watch their local teams. But ESPN is barring certain independent stations that are widely carried by cable systems—the same systems that would pay ESPN to carry NFL games. In Washington, it is likely one of the three network affiliates—WRC-TV-4, WJLA-TV-7 or WUSA-TV-9—will buy the rights to ESPN's Redskins-at-Miami game Dec. 20.

Preston Padden, president of the Washington-based Association of Independent Television Stations, wrote a letter of protest to Capital Cities/ABC, which owns 80 percent of ESPN, saying, "It seems patently unfair to declare our stations ineligible because of distant cable carriage—a phenomenon over which the originating station has absolutely no control."

Tim Lynch, general manager at WDCA, was upset at the news that his station could not bid for ESPN's Redskins game Dec. 20. "What ESPN and the NFL are doing is clearly not in the interest of the viewing public," he said. "I'd be happy to pick up the game and let them black me out from cable systems. We're on the Raleigh, N.C., cable system, for instance, and they can black us out there. ESPN's playing both ends against the middle. Obviously, they don't want Raleigh showing the game off Channel 20, but they can control that."

But Andrew Brilliant, an ESPN senior vice president for legal affairs, said that the cable network cannot control cable systems' rebroadcasts of over-the-air independents.

"I can't tell a cable system to black out another signal," he said. "I don't have that right. Our primary interest is getting as much revenue as we can from these sales. A cable system would say, 'Why should I pay ESPN when I can pick it up free off a distant signal?' And, of course, we also want to limit the overall exposure of these games outside of the home and away [markets] to strengthen the value of our package."

ESPN has rights to four preseason and eight Sunday night regular season games. While prohibiting the largest independents and superstations (such as WWOR and WPIX in New York and WGN in Chicago) from the bidding, ESPN says at least one independent in each market will be eligible. That independent in Washington would be little-watched WFTY-TV-50, but it is more likely that a network affiliate would buy the rights. In cities in which ESPN already has conducted bidding for preseason games—Denver, Miami, Chicago and Minneapolis—three ABC stations and one NBC affiliate have won local-market rights.

ESPN's list of ineligible bidders has further incited a recent debate between independents and cable, with the independents complaining about the continued loss of programs from free television to cable.

"There's nothing WTTG [which televises Redskins preseason games] can do to stop the cable carrier from importing it into Richmond," Padden said. "We thought we had a simple solution: let WTTG bid on the games, and, if their signal is imported into Richmond by a cable operator and if that causes a problem for ESPN's exclusivity, the cable operator has every opportunity to black it out."

Cable operators near Washington, for instance, might look at it this way: ESPN is asking for an extra 10 to 14 cents per subscriber per month for the entire NFL package, yet the Redskins game alone might be worth the rest of them combined. If the cable operator can get the Redskins game, without paying anything additional, from one of the independent stations it already carries, is it worth paying all that extra money to ESPN?

"It's a very expensive product for us," said Matt Zoller, marketing manager for Continental Cable in Richmond, which is picking up the ESPN package and also imports WTTG and WDCA. "The package would be considerably less valuable to us [if WTTG or WDCA could buy the Redskins-Miami game]. I don't think it would have been a deal-breaker, but we definitely would've been grumbling."

Independent
Television

James B. Hedlund
Vice President, Government Relations

September 20, 1988

Michael Remington, Esq.
Subcommittee on Courts, Civil Liberties
& the Administration of Justice
U.S. House of Representatives
2137B Rayburn House Office Bldg.
Washington, DC 20515

Dear Mike:

When reading the Judiciary Committee's report on H.R. 2848, we realized that Section 3, dealing with the FCC's inquiry and rulemaking on the feasibility of adopting syndicated exclusivity rules for home dishes, was incomplete. We apologize for not recognizing this earlier.

Essentially, there is no enforcement mechanism. The bill does provide that willful and repeated violation of the network "white area" provisions are actionable as infringements of copyright. The bill does not state, however, that if the FCC adopts syndex for the home dish industry, violations of those rules would also be considered acts of infringement. As we discussed with you, the FCC syndex rules for cable are enforceable by bringing actions under Section 111 of the Copyright Act.

We have therefore prepared the attached amendment to H.R. 2848 that we would like to have added to the bill before it reaches the House floor. Note that this is a slightly changed version of the amendment we had given you earlier. The changes reflect the suggestions of Mark Ellison of SBCA.

We look forward to working with you to accomplish this minor, but important, clarification.

Best regards,

JBH:sb
Attachment

INTV Association of Independent Television Stations, Inc.
1200 Eighteenth St., N.W., Suite 502, Washington, D.C. 20036 • (202) 887-1970/Fax (202) 887-0950

Amendment to Section 3 of H.R. 2848 ("Syndicated Exclusivity")

1. Insert "(a)" prior to the beginning of the section.

2. Add at the end the following new subsection:

"(b) In the event that the Commission adopts such rules, any willful and repeated secondary transmission made by a satellite carrier to the public of a primary transmission embodying the performance or display of a work which violates such Commission rules shall also be actionable as an act of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509. A television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of section 501 (b), be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station."

INTV 9/20/88

National Rural Electric Cooperative Association

1800 Massachusetts Avenue, N.W.
Washington, D.C. 20036
Telephone: 202/857-9500

August 1, 1988

Hon. Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties &
the Administration of Justice
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Kastenmeier:

On behalf of the memberships of the National Rural Electric Cooperative Association (NRECA) and the National Rural Telecommunications Cooperative (NRTC), I want to thank you for your strong leadership on H.R. 2848, the Satellite Home Viewer Copyright Act, as passed by the Subcommittee on Courts on July 7, 1988. NRECA and NRTC support the enactment of H.R. 2848 as it is vitally needed to ensure the delivery of satellite television signal to rural America.

I understand that the full House Judiciary Committee will be voting on H.R. 2848 in the coming days. This is an important issue and I urge your colleagues to join in their support for the bill. I understand that there may be an amendment to strike those provisions relating to the Federal Communications Commission for jurisdictional reasons. NRECA and NRTC are in full support of these provisions especially as they relate to price discrimination. NRECA and NRTC stand firm in our support for their inclusion in another Committee if that is the path taken by H.R. 2848.

I appreciate your, and many Subcommittee members', support, concern and interest on this important issue to rural America. I look forward to the entire Judiciary Committee joining your Subcommittee in support of this matter.

Sincerely,

Carolyn Herr Watts
Legislative Specialist

National Rural Electric Cooperative Association

1800 Massachusetts Avenue, N.W.
Washington, D.C. 20036
Telephone 202/857-9500

July 6, 1988

Hon. Robert W. Kastenmeier
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Kastenmeier:

On behalf of the memberships of the National Rural Electric Cooperative Association (NRECA) and the National Rural Telecommunications Cooperative (NRTC), I want to inform you of our support for H.R. 2848, the Satellite Home Viewer Copyright Act, as detailed by Subcommittee Chief Counsel Michael Remington.

I understand that the Subcommittee on Courts, Civil Liberties and the Administration of Justice will consider the bill at a mark-up scheduled for July 7, 1988. The bill to be voted on will include a number of changes to H.R. 2848 as introduced. Of these changes of importance to NRECA and NRTC are the expanded definition of "satellite carrier" and instructions for the Federal Communications Commission (FCC) to investigate satellite carrier price discrimination and report back to Congress in one year. This will give packagers, such as the NRTC, an administrative remedy to address price discrimination and gives Congress an opportunity to revisit the issue pending the FCC findings.

I appreciate your, and many Subcommittee members', support, concern and interest on this important issue to rural America. I look forward to the Subcommittee meeting tomorrow.

Sincerely,

Carolyn Herr Watts
Legislative Specialist

NRECA NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
1800 Massachusetts Avenue, N.W., Washington, D.C. 20036
Telephone: (202) 857-9500

September 25, 1987

Honorable R. W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties,
and the Administration of Justice
U. S. House of Representatives
2328 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the National Rural Electric Cooperative Association and the National Rural Telecommunications Cooperative, I want to thank you for appearing in the launch of Rural TV. We are quite proud of the efforts of our cooperative members in bringing the diversity that television has to offer into the homes of rural Americans.

I've enclosed a copy of our launch announcement. The direct satellite program is scheduled for Thursday, October 1. I will make sure that you receive a video tape of the program in its entirety.

I also want to take a moment to compliment you on your professional staff. Mike Remington and Mary Dixon are good and competent staff. It was a pleasure working with them.

Again, thank you for your time and interest in providing television services to the sparsely-settled areas of the United States.

Sincerely,

Bob Bergland
Executive Vice President

Enclosure

cc: Leroy Rose
Wisconsin Statewide Manager

BB:dfs

National Rural
Telecommunications
Cooperative

P O Box [illegible]
1115 30th Street N W
Washington D C 20007

(202) 944 2536

For Release:
September 9, 1987

Contact:
Jeff Almen, CPC
(202) 337-6700

Tom Hoy, NRECA
(202) 857-9536

NRTC To Launch Program Package for Rural Satellite Dish Owners

Washington, D.C. ...The National Rural Telecommunications Cooperative (NRTC) will announce the national launch of its program package for rural dish owners, *Rural TV*, during a live satellite television broadcast on October 1, 1987.

Uplinked from Kansas City, Missouri, the broadcast will review the elements of the program package, the just-concluded *Rural TV* test phase, the technology and applications of the NRTC effort, and it will address the future of the package.

NRTC's Chief Executive Officer Bob Phillips will host the program. He will be joined by rural utility leaders, industry experts and consumers involved in the test effort.

The program time and satellite location is:

"The Sky is Open"
The NRTC National Launch of *Rural TV*
Thursday, October 1
Test signal begins at 12:45 p.m., Central Time
Broadcast begins at 1:00 p.m., Central Time
Satellite: SpaceNet 1
Channel: 19
Audio: 6.2/6.8

Copies of the broadcast will be available from NRTC, but co-ops are encouraged to contact other systems with dishes about viewing the program or to make local or statewide arrangements for taping to be done.

# # # #

National Rural Telecommunications Cooperative

1115 30th Street, N.W.
Washington, D.C. 20007
(202) 944-2504

March 24, 1988

ARGUMENTS TO SUPPORT A NON-DISCRIMINATION AMENDMENT TO H.R. 2848 - THE HOME SATELLITE VIEWERS COPYRIGHT ACT

TVRO consumers should receive satellite programming for the same costs as do cable consumers. These charges should take into account the actual costs of doing business.

The argument has been made that a signal distributor needs only write one order to serve 10,000 customers in the cable market, but in order to serve 10,000 TVRO customers, the same signal distributor must write 10,000 orders. In order to serve those customers directly, this is true and any amendment to HR 2848 should address these incremental business costs.

The issue, however, that reaches beyond this "order-taking" argument is that signal packagers, like the National Rural Telecommunications Cooperative, have the ability, identical to a cable company. NRTC has the "back office" facilities, identical to cable companies and other distributors to process orders, provide direct signal authorisation, furnish a one-stop billing and collection system and provide marketing promotions to support the business. There should be no additional costs that a signal distributor should bear when dealing with a packager like the NRTC.

However, despite the marketing, billing and authorisation support that a packager like NRTC brings to the market, distant signal satellite carriers discriminate against the home satellite viewer. NRTC has been forced to accept, in order to secure contracts, wholesale signal prices ranging from 500 to 1000% higher than the wholesale prices charged to the cable industry. In addition to experiencing indefensible prices, NRTC has simply been denied access to other signals.

It is patently unfair that "passive common carriers" be allowed to reap the windfall from the home satellite dish customer by charging exorbitant rates for the carriage of a distant signal when there are no incremental costs involved for their service.

As copyright owners of broadcast station programming have agreed to a legislatively-negotiated copyright royalty, as contained in HR 2848, it is only fair that the satellite carriers could at least distribute the signals on fair terms and conditions.

HOME SATELLITE TELEVISION ASSOCIATION
P.O. BOX 18852
WASHINGTON, DC 20036

May 2, 1988

The Honorable Robert Kastenmeier
Chairman, Subcommittee on Courts, Civil
Liberties and the Administration of Justice
2137 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Kastenmeier:

On behalf of the Home Satellite Television Association and its membership in nearly every state in the country, we wish to strongly thank you for the hard work which you and your able counsel Mike Remington have put forward in pushing the markup of H.R. 2848. As you pointed out in the markup, there are many, often conflicting, interests involved in these issues. We strongly support your continued efforts to balance among these interests, recognizing that those of consumers are paramount.

Again, thank you for your tireless efforts to resolve these matters. We will be working to gain additional support for the legislation.

Sincerely,

George Kocian, Chairman
Home Satellite Television Association

LAW OFFICES
BROWN & FINN
CHARTERED
SUITE 810
1920 N STREET, N. W.
WASHINGTON, D. C. 20036

(202) 887-0600

September 15, 1987

The Honorable Robert Kastenmeier
Chairman, Subcommittee on Courts, Civil
Liberties & the Administration of Justice
Committee on the Judiciary
United States House of Representatives
2137 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Kastenmeier:

This firm represents the Home Satellite Television Association ("HSTA") and Amway Corporation ("Amway"). HSTA is the trade association of home satellite earth station consumers and retailers. It has testified this year on satellite legislation before both the House & Senate. Amway Corporation is the second largest direct selling company in the world with 1986 sales of 1.3 billion dollars. With nearly 2 million independent distributors worldwide and 750,000 within the United States distributing 4,000 different products, Amway is the only nationwide distributor of satellite programming that is independent of the cable industry. It currently distributes a feature film channel, Select TV, to home dish owners. It intends to distribute the signals of broadcast television stations as well.

We wish to sincerely thank you for recognizing again this year that there are copyright issues that demand Congressional clarification and for taking the legislative initiative to introduce H.R. 2848. We respectfully urge that you schedule hearings on this bill as soon as possible and we would be pleased to testify in those hearings if it would assist the Committee in its examination of the issues.

Each of our clients is highly interested in the passage of a fair copyright bill to eliminate the uncertainty presently surrounding the marketing of scrambled broadcast signals to home satellite dish owners. Our clients agree that there should be legislation which both balances the interests of the creative community and home satellite antenna consumers while treating such consumers no less favorably than cable television subscribers.

In hearings before you last year, we pointed to a number of areas that we felt were necessary to establish a more level playing field. We would like to briefly reiterate the major areas of concern. We are confident that changes in H.R. 2848 to ameliorate these concerns would unleash vast constituent support for this legislation.

Proposed Section 119(b)(1)(B) establishes a payment of $.12 per month per signal. This payment now appears to be substantially in excess of the average charge per cable subscriber for the identical signal in light of the recent Cablevision v. MPAA decision. We are concerned, in addition, that to the extent that there is a significant difference between a cable price and a dish price for broadcast signals, this could be used as a precedent for establishing a higher price for dish owners for viewing other types of signals as well. We propose amending this section to indicate that the average fee paid for dish distribution should correspond to the average fee for cable distribution on a per subscriber basis.

It is unfair to establish a sunset provision in the legislation for home dish viewers and have no such provision for cable television subscribers. Therefore, we urge that the sunset provision contained in proposed Section 119(c) and Section 4 be deleted.

Proposed Section 119(d)(9)(B) limits the number of superstations available to home dish owners to those signals obtaining 10% of the cable viewing audience. It is unfair to make the future opportunity for viewing of broadcast signals by means of home satellite antennas depend upon how many cable subscribers happen to choose to view a particular service. The effect of such a provision would be to consign home dish viewing opportunities to what cable subscribers, or more realistically cable companies, feel is important. Potential entrepreneurs wishing to bring increased broadcast signals to dish owners should not be required to serve 10% of cable homes first. Again, this is a matter of fundamental fairness.

Also, we believe that the bill should be strengthened to prevent unfair discriminatory pricing practices against home dish owners. Proposed Section 119(a)(4) purports to prohibit discrimination if such discrimination is against the provisions of the Communications Act or the FCC rules. It is far from clear that the provisions of the Communications Act would in fact prohibit the type of price discrimination that home satellite dish owners have encountered. Also, resolution of the matter is needed now, not after FCC proceedings and possible court appeals that can drag on for years. The discrimination is very real and is harmful to the development of home satellite earth station technology. For example, some carriers are charging up to 1,000% more for home dish viewing than for distribution to cable companies.

We believe the legislation should be modified to make it clear that carriers cannot discriminate in charges (other than volume discounts) between cable systems for service to their cable subscribers and satellite carrier customers, including distributors for private viewing, for service to their subscribers. To avoid hidden charges and mark-ups, we also urge that the legislation require that the copyright charge be separately specified by the carriers when billing their customers. Finally, we urge amending the definition of private viewing contained in proposed Section 119(d)(5) to include broadcast radio stations.

LAW OFFICES
BROWN & FINN
CHARTERED

The Honorable Robert Kastenmeier
September 15, 1987
Page Three

We wish to reiterate our strong support for you and for Congressman Synar for having taken the lead on these issues. We look forward to working with you through hearings and passage of the bill.

Sincerely,

Richard Brown
Richard L. Brown

Frederick W. Finn
Frederick W. Finn

RLB/FWF:bf

Extra-terrestrial Relays

Can rocket stations give worldwide radio coverage?

BY ARTHUR C. CLARKE

THE FOLLOWING ARTICLE WAS FIRST published in Wireless World *40 years ago this month—20 years before the launch of Early Bird, the world's first operational commercial communications satellite.*

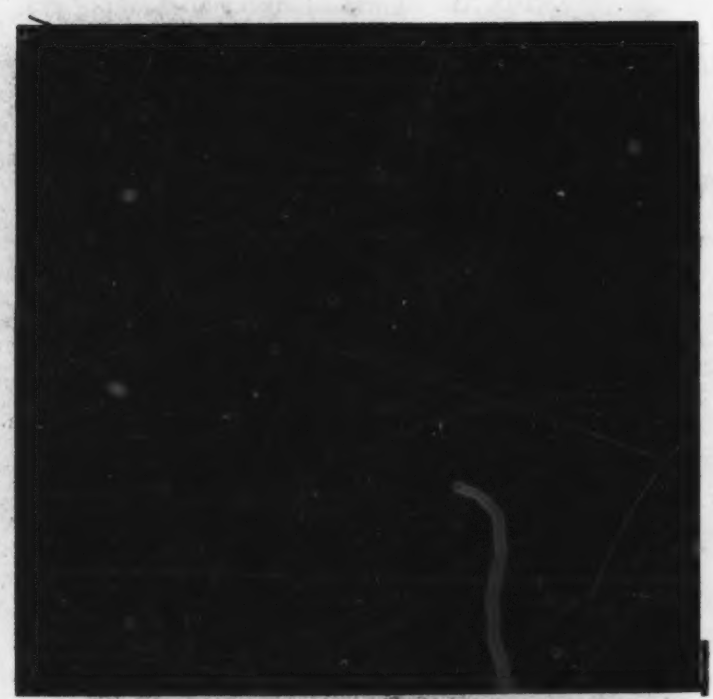
Although it is possible, by a suitable choice of frequencies and routes, to provide telephony circuits between any two points or regions of the earth for a large part of the time, long-distance communication is greatly hampered by the peculiarities of the ionosphere, and there are even occasions when it may be impossible. A true broadcast service, giving constant field strength at all times over the whole globe would be invaluable, not to say indispensable, in a world society.

Unsatisfactory though the telephony and telegraph position is, that of television is far worse, since ionospheric transmission cannot be employed at all. The service area of a television station, even on a very good site, is only about a hundred miles across. To cover a small country such as Great Britain would require a network of transmitters, connected by coaxial lines, waveguides or VHF relay links. A recent theoretical study[1] has shown that such a system would require repeaters at intervals of 50 miles or less. A system of this kind could provide television coverage, at a very considerable cost, over the whole of a small country. It would be out of the question to provide a large continent with such a service, and only the main centers of population could be included in the network.

The problem is equally serious when an attempt is made to link television services in different parts of the globe. A relay chain several thousand miles long would cost millions, and transoceanic services would still be impossible. Similar considerations apply to the provision of wideband frequency modulation and other services, such as high-speed facsimile, which are by their nature restricted to the ultra-high frequencies.

Many may consider the solution proposed in this discussion too far-fetched to be taken very seriously. Such an attitude is unreasonable, as everything envisaged here is a logical extension of developments in the last 10 years—in particular the perfection of the long-range rocket, of which V2 [the rockets used against the British by the Germans in World War II] was the prototype. While this article was being written, it was announced that the Germans were considering a similar project, which they believed possible within 50 to 100 years.

Before proceeding further, it is necessary to discuss briefly certain fundamental laws of rocket propulsion and "astronautics." A rocket which achieved a sufficiently great speed in flight outside the earth's atmosphere would never return. This "orbital" velocity is 8 km/second (5 miles/second), and a rocket that attained it would become an artificial satellite, circling the world forever with no expenditure of power—a second moon, in fact. The German transatlantic rocket A10 would have



Clarke's theories laid the groundwork for modern satellite communications. The English-born writer now lives in Sri Lanka.

reached more than half this velocity.

It will be possible in a few more years to build radio-controlled rockets that can be steered into such orbits beyond the limits of the atmosphere and left to broadcast scientific information back to the earth. A little later, manned rockets will be able to make similar flights with sufficient excess power to break the orbit and return to earth.

There are an infinite number of possible stable orbits, circular and elliptical, in which a rocket would remain if the initial conditions were correct. The velocity of 8 km/second applies only to the closest possible orbit, one just outside the atmosphere, and the period of revolution would be about 90 minutes. As the radius of the orbit increases the velocity decreases, since gravity is diminishing and less centrifugal force is needed to balance it. Figure 1 shows this graphically. The moon, of course, is a particular case and would lie on the curves of figure 1 if they were produced. The proposed German space stations would have a period of about four and a half hours.

It will be observed that one orbit, with a radius of 42,000 km, has a period of exactly 24 hours. A body in such an orbit, if its plane coincided with that of the earth's equator, would revolve with the earth and would thus be stationary above the same spot on the planet. It would remain fixed in the sky of a whole hemisphere and unlike all other heavenly bodies would neither rise nor set. A body in a smaller orbit would revolve more quickly than the earth and so would rise in the west, as indeed happens with the inner moon of Mars.

Using material ferried up by rockets, it would be possible to construct a "space station" in such an orbit. The station could be provided with living quarters, laboratories and everything needed for the comfort of its crew, who would be relieved and provisioned by a regular rocket service. This project might be undertaken by purely scientific reasons as it would contribute enormously to our knowledge of astronomy, physics, and meteorology. A good deal of literature has already been written on the subject[2].

Although such an undertaking may seem fantastic, it requires for its fulfillment rockets only twice as fast as those already in the design stage. Since the gravitational stresses involved in the structure are negligible, only the very lightest materials would be necessary and the station could be as large as required.

Let us now suppose that such a station were built in this orbit. It could be provided with receiving and transmitting equipement (the problem of power will be discussed later) and could act as a repeater to relay transmissions between any two points on the hemisphere beneath, using any frequency which will penetrate the inonosphere. If directive arrays were used, the power requirements would be very small, as direct line of sight transmission would be used. There is the further important point that arrays on the earth, once set up, could remain fixed indefinitely.

Moreover, a transmission received from any point on the hemisphere could be broadcast to the whole of the visible face of the globe, and thus the requirements of all possible services would be met (fig. 2).

It may be argued that we have as yet no direct evidence of radio waves passing between the surface of the earth and outer space; all we can say with certainty is that the shorter wavelengths are not reflected back to the earth. Direct evidence of field strength above the earth's atmosphere could be obtained by V2 rocket technique, and it is to be hoped that someone will do something about this soon as there must be quite a surplus stock somewhere! Alternatively, given sufficient transmitting power, we might obtain necessary evidence by exploring for echoes from the moon. In the meantime, we have visual evidence that frequencies at the optical end of the spectrum pass through with little absorption except at certain frequencies at which resonance effects occur. Medium-high frequencies go through the E layer twice to be reflected from the F layer, and echoes have been received from meteors in or above the F layer. It seems fairly certain that frequencies from, say, 50 Mc/s to 100,000 Mc/s could be used without undue absorption in the atmosphere or the ionosphere.

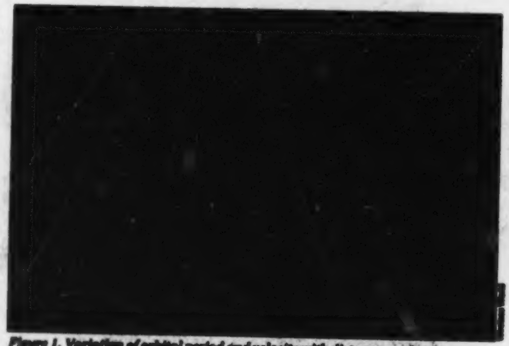


Figure 1. Variation of orbital period and velocity with distance from the center of the Earth.

A single station could only provide coverage to half the globe, and for a world service three would be required, though more could be readily utilized. Figure 3 shows the simplest arrangement. The stations would be arranged approximately equidistantly around the earth, and the following longitudes appear to be suitable:

30 E—Africa and Europe.
150 E—China and Oceana.
90 W—The Americas.

The stations in the chain would be

Figure 2. Typical extra-terrestrial relay. Transmission from A being relayed to points B and C; transmission from D being relayed to whole hemisphere.

Figure 3. Three satellites would ensure complete coverage of the globe.

linked by radio or optical beams, and thus any conceivable beam or broadcast service could be provided.

The technical problems involved in the design of such stations are extremely interesting,[3] but only a few can be gone into here. Batteries of parabolic reflectors would be provided, of apertures depending on the frequencies employed. Assuming the use of 3,000 Mc/s waves, mirrors about a meter across would beam almost all the power on to the earth. Larger reflectors could be used to illuminate single countries or regions for the more restricted services, with consequent economy of power. On the higher frequencies it is not difficult to produce beams less than a degree in width, and, as mentioned before, there would be no physical limitations on the size of the mirrors. (From the space station, the disc of the earth would be a little over 17 degrees across.) The same mirrors could be used for many different transmissions if precautions were taken to avoid cross modulation.

Figure 4. Solar radiation would be cut off for a short period each day at the equinoxes.

It is clear from the nature of the system that the power needed will be much less than that required for any other arrangement, since all the energy radiated can be uniformly distributed over the service area, and none is wasted. An approximate estimate of the power required for the broadcast service from a single station can be made as follows:

The field strength in the equatorial plane of a λ/2 dipole in free space at a distance of *d* meters is

$$e = 6.85 \frac{\sqrt{P}}{d} \text{ volts/meter, where}$$

P is the power radiated in watts.

Taking *d* as 42,000 km (effectively it would be less), we have

$P = 37.6\ e^2$ watts. (e now in μV/meter.)

If we assume e to be 50 microvolts/meter, which is the FCC standard for frequency modulation, P will be 94 kW. This is the power required for a single dipole, and not an array that would concentrate all the power on the earth. Such an array would have a gain over a simple dipole of about 80. The power required for the broadcast service would thus be about 1.2 kW.

Ridiculously small though it is, this figure is probably much too generous. Small parabolas about a foot in diameter would be used for receiving at the earth end and would give a very good signal/noise ratio. There would be very little interference, partly because of the frequency use and partly because the mirrors would be pointing toward the sky, which could contain no other source of signal. A field strength of 10 microvolts/meter might well be ample, and this would require a transmitter output of only 50 watts.

When it is remembered that these figures relate to the broadcast service, the efficiency of the system will be realized. The point-to-point beam transmissions might need powers of only 10 watts or so. These figures, of course, would need correction for ionospheric and atmospheric absorption, but that would be quite small over most of the band. The slight falling off in field strength due to this cause toward the edge of the service area could be readily corrected by a non-uniform radiator.

The efficiency of the system is revealed when we consider that the London television service required about 3 kW average power for an area less than 50 miles in radius. [5] →

A second fundamental problem is the provision of electrical energy to run the large number of transmitters required for the different services. In space beyond the atmosphere, a square meter normal to the solar radiation intercepts 1.35 kW of energy.[5] Solar engines have already been devised for terrestrial use and are an economic proposition in tropical countries. They employ mirrors to concentrate sunlight on the boiler of a low-pressure steam engine. Although this arrangement is not very efficient, it could be made much more so in space where the operating components are in a vacuum, the radiation is intense and continuous, and the low-temperature end of the cycle could be not far from absolute zero. Thermo-electric and photo-electric developments may make it possible to utilise the solar energy more directly.

Though there is no limit to the size of the mirrors that could be built, one 50 meters in radius would intercept over 10,000 kW and at least a quarter of this energy should be available for use.

The station would be in continuous sunlight except for some weeks around the equinoxes, when it would enter the earth's shadow for a few minutes every day. Figure 4 shows the state of affairs during the eclipse period. For this calculation, it is legitimate to consider the earth as fixed and the sun as moving around it. The station would graze the earth's shadow at A, on the last day in February. Every day, as it made its diurnal revolution, it would cut more deeply into the shadow, undergoing its period of maximum eclipse on March 21. On that day it would only be in darkness for 1 hour, 9 minutes. From then onward the period of eclipse would shorten, and after April 11 (B) the station would be in continuous sunlight again until the same thing happened six months later at the autumn equinox, between September 12 and October 14. The total period of darkness would be about two days per year, and as the longest period of eclipse would be little more than an hour, there should be no difficulty in storing enough power for an uninterrupted service.

'It's the only way true world coverage can be achieved.'

Conclusion

Briefly summarised, the advantages of the space station are as follows:

1) It is the only way in which true world coverage can be achieved for all possible types of service.

2) It permits unrestricted use of a band at least 100,000 Mc/s wide, and with the use of beams, an almost unlimited number of channels would be available.

3) The power requirements are extremely small since the efficiency of "illumination" will be almost 100 percent. Moreover, the cost of the power would be very low.

4) However great the initial expense, it would only be a fraction of that required for the world networks replaced, and the running costs would be incomparably less.

Appendix—Rocket Design

The development of rockets sufficiently powerful to reach "orbital" and even "escape" velocity is now only a matter of years. The following figures may be of interest in this connection.

The rocket has to acquire a final velocity of 8 km/second. Allowing 2 km/second for navigational corrections and air resistance loss (this is legitimate as all space rockets will be launched from very high country) gives a total velocity needed of 10 km/second. The fundamental equation of rocket motion is[2]

$$V = v \log_e R$$

where V is the final velocity of the rocket, v the exhaust velocity, and R the ratio of initial mass to final mass (payload plus structure). So far v has been about 2 to 2.5 km/second for liquid fuel rockets, but new designs and fuels will permit of considerably higher figures. (Oxy-hydrogen fuel has a theoretical exhaust velocity of 5.2 km/second and more powerful combinations are known.) If we assume v to be 3.3 km/second, R will be 20 to 1. However, owing to its finite acceleration, the rocket loses velocity as a result of gravitational retardation. If its acceleration (assumed constant) is a meters/second^2[2], then the necessary ratio R_g is increased to

$$R_g = R\,\frac{a + g}{a}$$

For an automatically controlled rocket, a would be about $3g$ and so the necessary R would be 37 to 1. Such ratios cannot be realised with a single rocket but can be attained by "step-rockets"[2], while very much higher ratios (up to 1,000 to 1) can be achieved by the principle of "cellular construction"[3].

'Atomic power has brought space travel half a century nearer.'

Epilogue—Atomic Power

The advent of atomic power has at one bound brought space travel half a century nearer. It seems unlikely that we will have to wait as much as 20 years before atomic-powered rockets are developed, and such rockets could reach even the remoter planets with a fantastically small fuel/mass ratio—only a few percent. The equations developed in the appendix still hold, but v will be increased by a factor of about a thousand.

In view of these facts, it appears hardly worthwhile to expend much effort on the building of long-distance relay chains. Even the local networks that will soon be under construction may have a working life of only 20 to 30 years.

References

[1] "Radio-Relay Systems," C.W. Hansell. *Proc. I.R. E.*, Vol 33, March, 1945. [2] "Rockets," Willy Ley. (Viking Press, N.Y.) [3] "Das Problem der Befahrung des Weltraums," Hermann Noordung. [4] "Frequency Modulation," A. Hund. (McGraw Hill.) [5] "London Television Service," MacNamara and Birkinshaw. *J.I.E.E.*, Dec., 1938. [5] "The Sun," C. G. Abbot. (Appleton-Century Co.) [7] *Journal of the British Inter-planetary Society*, Jan. 1939. □

Reprinted with permission.

by Mark Long

THE ASCENT OF KU-BAND

DURING THE NEXT FEW YEARS, KU-BAND WILL GROW TO MATCH C-BAND IN SERVICES.

In this first part of a two-part series, Satellite ORBIT *covers the latest advances in Ku-band satellite technology and services. In this article, Technical Editor Mark Long looks at new Ku-band satellites that will be in operation by the end of this year. Next month, he will describe new equipment that dish owners can use to receive both Ku- and C-band signals.*

A revolution in satellite TV is about to shift into high gear. During the coming year, several new satellites will be launched that will dramatically expand the number of services available in the Ku-band, a higher frequency range than C-band. Thanks to the higher-powered signals transmitted by Ku-band satellites, consumers will be able to pick up a host of new services on smaller-diameter dishes without the microwave interference problems that often plague C-band reception.

North American Ku-band satellites with output power levels of 16 to 45 watts could be carrying more than 100 channels by the end of 1987. These new channels will offer such services as satellite news gathering, regional coverage of live sports, distribution of syndicated TV programming, educational TV for college credit, premium TV program distribution to hotels, motels, and SMATV systems, and direct-to-home satellite TV.

SATELLITE NEWS GATHERING

By 1987, Ku-band satellite links will be the dominant method of delivering video news coverage from the field to the studio control room. Mobile Ku-band satellite-news-gathering teleports are clearly superior to their C-band counterparts in several respects. Since Ku-band satellites operate on much higher frequencies than C-band birds, smaller dishes can be used for uplinking video signals. This not only lowers the cost of mobile dishes, but also makes them much easier and less expensive to transport. Because the cost of transportable Ku-band earth stations is appreciably lower than the cost of C-band units, local TV stations, as well as regional and national news services, will be able to afford their own rigs.

The 12-GHz frequency spectrum also affords mobile teleports another distinct advantage over C-band transportables. While C-band satellites share the same frequency band with Ma Bell's extensive network of terrestrial microwave links, 12-GHz uplinks and downlinks remain relatively free from interference problems caused by nearby telephone transmission facilities. This makes it easier to conduct mobile operations in crowded urban and suburban environments.

Several organizations have already announced their plans for using the latest Ku-band birds for satellite news gathering. United States Satellite Broadcasting (USSB) of St. Paul, Minnesota, has leased four transponders on RCA Americom's Satcom K2 satellite for more than $85 million. CONUS Communications, a USSB subsidiary, will use Satcom K2 to distribute national and regional news services to affiliate stations across the U.S.

After it is launched this month, Satcom K2 will be used to distribute national and regional news services to affiliates across the U.S.

RCA's Satcom K2 and K1 satellites are scheduled for deployment this month and in December of 1985 via NASA space shuttle missions.

"These satellites will be the most powerful domestic communications satellites in service," states Eugene F. Murphy, chairman of RCA Communications. "Each satellite carries 16 transponders with 45 watts of power, which means that they can deliver a superior quality television signal into antennas as small as three feet in diameter."

The four transponders on Satcom K2 will augment the single SBS III transponder which CONUS has been using for the past year. CONUS Communications already has a fleet of 25 transportable uplinks in the field. Not only can CONUS-member stations use the system to link transportable facilities to their local broadcast studios, but they can also access a video digest of newsworthy events transmitted daily from the Twin Cities studios of USSB, or exchange programs with other broadcasters.

With the launch of Satcom K2 this month, CONUS will have the capacity it needs to continue expanding its base of operations. "Because our member stations are located nationwide, we'll be in an excellent position to continue not only with first or early coverage of events having local interest, but those with national impact as well," said Chuck Dutcher, vice president and general manager of CONUS. "Television stations equipped with RCA's Ku-band antenna/receiver package will be able to take advantage of this new source of news programming material—either live or to be taped for later playback."

This past September, CONUS began offering "Washington Direct," an innovative news service that supplies subscribing stations with a daily feed of two or more hours of news programming from the nation's capital. Unlike its other satellite news gathering service, which is only available to affiliate stations, CONUS's Washington Direct service is available to any TV station, magazine, or newspaper that wishes to subscribe. Dish owners will also be able to use the service to keep up with the latest developments in Washington, since CONUS has no plans at present to scramble any of its Ku-band satellite TV transmissions.

NBC will also be using Satcom K2 for satellite news gathering purposes. Earlier this year, NBC inaugurated an extensive 12-GHz satellite network linking the broadcaster's main studios with NBC affiliate stations nationwide. The network will lease six Satcom K2 transponders from RCA to replace some of the capacity it currently leases on two satellites, SBS II and SBS III. By February 1986, NBC will be off SBS II entirely, and will use just one full-time and five part-time transponders on SBS III. Since Satcom K2 coverage is limited to the continental U.S., NBC will continue to use a single C-band transponder on Satcom F1R to distribute NBC programming to Alaska and Hawaii.

NBC's Ku-band transponders will see extensive part-time use on weekends when the network transmits regional coverage of NFL football games or other professional sporting events to NBC affiliate stations.

NBC is also considering the creation of its own cable news service to directly compete with Turner Broadcasting's CNN and CNN Headline News. If NBC does go ahead with plans to launch a competing service in 1986, look for Satcom K2 to provide the essential satellite capacity for linking the network's transportable uplinks with NBC studios. Although NBC has gone on record as favoring scrambling of all network transmissions, the network's representatives have indicated that there are no immediate plans to encrypt it's signals.

SBS III and Satcom K2 won't be the only 12-GHz satellites used for satellite news gathering. Spacenet satellites have been regularly used during the past year by the Florida News Network (FNN) for the exchange of news items among local Florida broadcasters. The BAF Communications Corporation of Salem, Massachusetts, plans to use leased capacity on the recently launched GStar A1 satellite to link the company's fleet of transportable uplinks to TV broadcasters nationwide. Present plans call for BAF to utilize more than five hours of transponder time each weekday. The initial service on GStar A1 will involve transportables which have been leased to local TV stations in Colorado, Arizona, and Georgia.

SATELLITE SYNDICATION SERVICES

With the launch of Satcom K2, RCA intends to offer television program syndicators a distribution system for reaching commercial broadcast TV stations, beginning in early 1986. As part of the system, RCA Americom will use two 45-watt transponders to simultaneously transmit as many as four individual TV signals. "The RCA Americom Syndication System is designed to provide a means whereby television stations have more flexibility in program reception," said Dr. James J. Tietjen, president and chief executive officer of RCA Americom. "It is a major step in eliminating 'antenna conflict,' allowing station operators to simultaneously receive both time-sensitive and non-time-sensitive programming."

The increased flexibility is due to RCA Americom's decision to supply every TV broadcast station in the U.S. with a free 3.7-meter Ku-band terminal that will be sighted onto the RCA Satcom K2 bird. Each TV station will receive $1,000 from RCA to defray the cost of installing the 12-GHz TVRO. The RCA-supplied earth stations will be a valuable addition to existing C- and Ku-band terminals already owned by TV broadcasters. At press time, more than 420 TV stations had accepted RCA's offer, providing customers leasing Satcom K2 capacity with a highly attractive marketing network for new program services that will be on line by the time that the K2 satellite is fully operational.

EDUCATIONAL AND [illegible] PROGRAMMING

Hi-tech oriented individuals and organizations looking for something more than just entertainment programming will find that the GStar A1 satellite is now transmitting professional educational TV services not currently available on C-band. The National Telecommunications University (NTU) has leased a single transponder on GStar A1 to transmit graduate courses in engineering, prepared by NTU's 19 member colleges and universities.

Currently, 40 American corporations pick up NTU programming for their internal training departments. For this fall, more than 600 students from major corporations have enrolled in 45 to 50 different courses in the fields of computer engineering, computer science, electrical engineering, and engineering management and manufacturing systems. The AMCEE (Association for Media-Based Continuing Education for Engineers), an organization which shares satellite capacity with NTU, will also pro-

HI-NET IS NOW SUPPLYING ESPN, CNN, SHOWTIME, AND HI-NET'S OWN SATELLITE CINEMA.

SATELLITE CINEMA SHOULD BE OF SPECIAL INTEREST TO KU-BAND VIEWERS SINCE IT CARRIES MANY FIRST-RUN MOVIES.

vide several hours each day of unaccredited courses of interest to engineers and technicians. Since each GStar satellite transponder has a usable bandwidth of 54 MHz instead of the 36-MHz bandwidths employed by most C-band satellites, the NTU transponder will be able to transmit two educational TV courses simultaneously. The 'satellite classroom' will be active from 8:00 a.m. to midnight weekdays. Individuals or organizations that have Ku-band earth stations can arrange to audit courses by contacting Mark Bradley, NTU, P.O. Box 700, Fort Collins, Colorado 80522.

Also appearing on GStar satellites is the Campus Satellite Network, which supplies a variety of entertainment programming to college and university campuses across the country. Concerts in stereo and other programs of interest to students appear on a regular basis.

On September 12, 1985, Hi-Net Communications, a joint venture of Holiday Inn and Comsat General, inaugurated a new satellite-delivered service that eventually will supply premium program services to Holiday Inn hotels around the world.

ESTIMATED NUMBER OF TV CHANNELS TO BE CARRIED BY NORTH AMERICAN KU-BAND SATELLITES

	[illegible]	[illegible]	[illegible]
SBS I-V	[illegible]	[illegible]	[illegible]
Spacenet I-II	[illegible]	[illegible]	[illegible]
GStar A1-A3	[illegible]	[illegible]	[illegible]
RCA Satcom K1-K3	[illegible]	[illegible]	[illegible]
Hughes F1-F?	[illegible]	[illegible]	[illegible]
Anik C1-C3	[illegible]	[illegible]	[illegible]
ABC 1-3	[illegible]	[illegible]	[illegible]
Total	[illegible]	[illegible]	[illegible]

Using leased capacity on GStar A1, Hi-Net is now supplying ESPN, CNN, Showtime, and Hi-Net's own Satellite Cinema pay-per-view service to Holiday Inns throughout North America. Both ESPN and CNN will be transmitted by means of a single GStar transponder which covers the entire continental U.S. Two additional transponders, one beaming east and the other west, are used to carry East and West Coast versions of Showtime and Satellite Cinema. Since the Satellite Cinema service is aired only at night, its capacity is used during daytime hours for BizNet programs and for conducting videoconferences. Satellite Cinema should be of special interest to Ku-band viewers, since it carries many first-run movies before they are aired by any of the C-band premium programmers (at press time Satellite Cinema and Showtime were available only on the East Coast beam). Currently, Hi-Net is not scrambled. Hi-Net has confirmed, however, that it has signed a $2.6 million agreement with Scientific-Atlanta for the production of B-MAC encryption technology, which will allow Hi-Net to scramble its program feeds. By June of 1986, the B-MAC scrambling system should be fully implemented.

RCA Americom plans to supply premium programming via its second Ku-band spacecraft, Satcom K1, which is scheduled to be launched in December of this year. Negotiations are currently under way with a number of different organizations interested in offering premium program services to multi-unit dwellings and complexes. RCA contends that its 12-GHz Satcom birds are ideal for serving urban locations, since the medium-powered spacecraft could conceivably deliver a commercial-quality signal into antennas as small as 1 meter (3.28 feet) in diameter.

[illegible]

RCA has also been touting Satcom Ku-band transponders as excellent berths for new direct-to-home satellite TV services. RCA hopes to regain some of the cable TV services that the corporation lost to Hughes Communications when Galaxy I was launched in 1983. Claiming that home satellite TV reception would be possible with antennas only 70 centimeters (2 feet) in diameter, RCA now intends to market some of the available capacity on Satcom K1 for direct reception by individual households. RCA is currently talking with various cable conglomerates about the lease or outright purchase of transponders for transmission of direct-to-home satellite TV services.

Of course, readers should keep in mind that even with all the upcoming Ku-band programming, a wider selection of entertainment choices will continue to be carried by C-band satellites in the foreseeable future. The situation was similar in the 1960s, when terrestrial UHF TV channels first became available. Few if any, of the established VHF TV channels were put out of business. Future Ku-band services should be seen as supplementing rather than replacing C-band programming. Ku-band satellite services also represent an alternative for those viewers who, for one reason or another, cannot access C-band satellites.

The Ku-band represents a new frontier which many C-band dish owners may wish to explore for themselves. The cost of modifying your existing earth station for reception of both C- and Ku-band signals currently is less than $400 for those systems equipped with block downconversion receivers, and this cost will drop even further in the months ahead.

Next month, we'll take a look at some of the new dual C- and Ku-systems that are currently on the market. ■

Mark Long is Technical Editor of Satellite ORBIT *and author of The Down-to-Earth Guide to Satellite TV* and the *1985 World Satellite Almanac.*

Eye on the Sky

SUPERSTATION MUDDLE, AGAIN

While Congress fiddles over the legalities, dish owners burn.

As we report in Issues in Orbit on page 17, a viewing rights problem that has been lingering in the background for more than a year has reared its head again. Tempo Enterprises, the company that puts the superstation WTBS up on satellite, announced in late April that it would not sell dish owners subscriptions to WTBS. Why not? Because current law does not specifically state that common carriers like Tempo can sell superstations to home satellite TV viewers.

This same problem made WOR unavailable to dish owners when Eastern Microwave, another common carrier, first scrambled the New York superstation last March. But since then, WOR has been included in the Superstar Connection, a package of superstations sold by United Video, another major common carrier. Why is it that WOR, KTVT, WPIX, and WGN are being marketed to dish owners, but WTBS isn't? Because United Video's lawyers believe that selling superstations to dish owners is legal under current law, but Tempo's attorneys say it's illegal. United Video has decided to take a calculated risk, but Tempo refuses to gamble.

Tempo and WTBS have appealed to Congress to amend the law so that they can do business with satellite TV viewers. It would be nice if this issue could be dealt with quickly. Unfortunately, that's unlikely. Congress took a run at passing a superstation bill last year that would have cleared up the confusion, but the proposal died because the networks wanted a clause banning the uplinking and resale of their affiliate stations. (ABC, CBS, and NBC have taken Satellite Broadcast Networks to court over the same issue. SBN sells the PrimeTime 24 package of three network affiliates to dish owners.) The House Subcommittee on Courts may bring up last year's superstation bill again soon, but the dispute over allowing network affiliates to be uplinked could delay action for months.

While they wait for this muddle to be cleared up, dish owners who own VideoCipher II descramblers can probably continue watching WTBS. Tempo scrambled the superstation in May, but in the "fixed-key mode," which means that no subscription is needed to receive the signal. Tempo officials say they plan to keep it that way indefinitely, but the common carrier could switch to "addressable mode" at any time, making WTBS completely unavailable until the law is clear on selling subscriptions to dish owners.

Congress, the common carriers, the superstations, and the networks should all bear in mind that dish owners want just one thing—access to television. From our point of view, United Video's approach is best: Take the risk that selling superstations to dish owners violates a legal technicality and make the services available today. ■

Richard A. Smith

ORBIT

[illegible]

Bob Brown

[illegible]

NEW YORK

[illegible]

NEW YORK

[illegible]

CHICAGO

[illegible]

Broadcasting Oct 24

Congress, in overtime, passes TVRO, children's ad bills

H.R. 2848 clears up copyright questions over delivery of over-the-air signals to home dishes; broadcasters now must provide programing for "special needs of children" with ad limits; also OK'd is lottery advertising

The 100th Congress flexed its regulatory muscle last week and, as a result, the Fifth Estate will operate under some new ground rules. For starters, the Senate, after months of uncertainty, approved by voice vote a House measure (H.R. 3966) that would reimpose limits on the amount of advertising during children's programs and require broadcasters to serve the "special needs of children." Despite earlier threats of a presidential veto, most observers felt the measure would become law.

And a copyright bill (H.R. 2848), which should bolster the struggling home satellite industry as well as ensure backyard dish owners access to network and independent broadcast signals, was also headed for the President's desk.

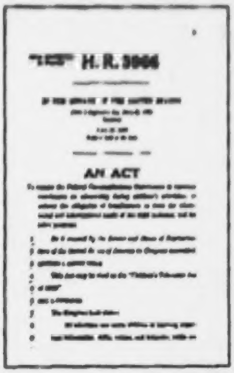
This was all part of last week's activity on Capitol Hill as Congress prepared to depart last Friday night (Oct. 21). Slated to adjourn more than two weeks ago, the lawmakers stayed on primarily to pass a mammoth antidrug bill (BROADCASTING, Oct. 10, 17). By week's end, however, it appeared that the 100th Congress had completed its communications policymaking business.

The copyright measure creates a six-year compulsory license for the satellite distribution of broadcast signals to dish owners (BROADCASTING, Sept. 26, Oct. 10). The bill goes a long way toward eliminating uncertainties surrounding the legality of such distribution under copyright law.

The Satellite Broadcasting Network (trade name Primetime 24), which has been engaged in court battles over the delivery of its program package of network signals to rural dish owners, hailed the new law as a "giant step" toward advancing the goal of bringing television services to "thousands of unserved households."

H.R. 2848 establishes more than copyright policy. It should help stabilize the fledgling home satellite (TVRO) industry through provisions that establish stiffer penalties for piracy of satellite signals and make the manufacture, assembly and modification of unauthorized descramblers a felony punishable by a fine of up to $500,000 and imprisonment of up to five years. Also, the FCC would be required to conduct an inquiry to determine if a universal encryption standard is needed.

The measure was plagued by problems since its inception some four years ago. But after lengthy negotiations between industry groups, the lawmakers (chiefly House Copyright Subcommittee Chairman Robert Kastenmeier (D-Wis.), Mike Synar (D-Okla.), Rick Boucher (D-Va.) and Billy Tauzin (D-La.)) fashioned a suitable compromise. Support slowly grew, with satellite carriers, the TVRO industry, cable, the motion picture industry and broadcasters eventually backing it. (Despite that momentum, an internal dispute between Senate and House members over trademark legislation almost sank the bill (BROADCASTING, Oct. 17]).



H. R. 3966

AN ACT

The most formidable opposition initially came from broadcasters. But independents were finally placated with language that instructs the FCC to consider a syndex rule for the retransmission of broadcast signals to dish owners. And the networks dropped their objections after stronger safeguards concerning the delivery of affiliate signals to so-called white areas (where network signals are unavailable by other means) were added.

Three authorization bills affecting the FCC, the Corporation for Public Broadcasting and the National Telecommunications have to provide programing that serves the "special needs of children." Additionally, the FCC during license renewal time would have to determine whether a licensee had and Information Administration sailed through the House. They establish funding levels and, in the cases of the FCC and CPB, incorporate some policy changes (BROADCASTING, Oct. 17).

The National Association of Broadcasters was especially pleased with the final passage of a lottery advertising measure, enabling stations to air advertisements or even public service announcements promoting all legal lotteries. Currently, broadcasters can carry advertisements for state-run lotteries only. "Many broadcasters have had to turn down the requests of charity groups and others to publicize their community events, much to the frustration of these groups," said NAB President Eddie Fritts in a statement last week.

Of last week's congressional accomplishments, the children's television bill was certainly the most controversial. Stalled in the Senate since June (BROADCASTING, June 13), the measure's fate was hanging in the balance. House Telecommunications Subcommittee Chairman Ed Markey (D-Mass.) and Senator Tim Wirth (D-Colo.) were at loggerheads over the measure after Wirth blocked Senate action in an effort to amend the House bill, of which Markey is a key sponsor (BROADCASTING, Oct. 10, 17).

Wirth, who chaired the House Telecommunications Subcommittee when he served in the House, was criticized by the bill's proponents for "interfering," and was accused of trying to claim credit for legislation others had labored over. Wirth does not sit on the Commerce Committee, which oversees communications matters, but in the Senate it takes only one member to hold up legislation. Hill sources say he pulled back to avoid any blame for killing the measure.

Nevertheless, Wirth's undertakings won praise from some groups, including the American Academy of Pediatrics, American Psychological Association, Consumer Federation of America and the National Education Association, which issued a joint statement endorsing his actions. They also voiced disappointment with the broadcast industry for blocking Wirth's efforts.

But Peggy Charren of Action for Children's Television defended the broadcasting industry. "The industry signed onto this in good faith.... I think their behavior was fine." She was ecstatic about the prospects of the new law. "This reverses the Reagan administration's attitude of 'let them eat cable,'" said Charren, who also praised Markey. "Markey deserves more credit than anybody on this legislation," she said.

Under the measure, broadcasters would "serve the educational and informational needs of children in its overall programing." Advertising would be restricted to 10½ minutes per hour on weekends and 12 minutes per hour on weekdays. But the limits would not take effect until after Jan. 1, 1990, and by 1993 the FCC would be authorized to review the standards and modify them if necessary.

During the Senate's action last week, Wirth expressed his frustration with the initiative and stated his preference to see the programing requirement made "stronger and more explicit." Nevertheless, he agreed to support it after receiving a commitment from Senate Commerce Committee Chairman Ernest Hollings (D-S.C.) to hold a series of hearings on a "host of children's television issues."

Hollings also promised that the committee would conduct a study in 1990 to determine whether the renewal standard provision is providing enough of an incentive to increase the "quality and quantity of children's programing," something that Wirth had been pushing for in his proposed amendment.

A licensee must serve "the educational and informational needs of children in its overall programing."

Moreover, Hollings engaged in a colloquy with Wirth to clarify that while broadcasters "can rely upon overall programing," they must also "make some reasonable effort to meet the unique public service needs of the various segments of the child audience, including programing aimed at the young child."

The legislation is the product of nearly two months of intensive negotiations between Markey and the NAB (BROADCASTING, April 4). The networks and the Association of Independent Television Stations are also on board. "Although there were parts of this bill we would have preferred to omit, we did not oppose it in the interest of the child audience and in the interest of compromise," said Benjamin McKeel, chairman of NAB's television board and vice president of television for Nationwide Communications.

Not only did broadcasters work with Markey to reach a compromise, but there were already signs of heightened sensitivity to the issue. NAB announced last week it was launching a national campaign in January to promote a "Family Viewing Month" to "enhance the medium's educational and entertainment aspects."

But the FCC reacted strongly. FCC Chairman Dennis Patrick called the legislation "both unnecessary and ill-advised, especially considering the pending resolution by the FCC of related rulemaking dockets." Patrick was referring to the agency's comparative license renewal proceeding (see page 31) and its broad inquiry into children's advertising. Moreover, the chairman took issue with the ad limits, saying that they are "considerably below the industry standard." (Under the old NAB code, the limits were 12 minutes per hour on weekdays, but only nine-and-a-half minutes on weekends.)

His comments drew a sharp rebuke from Larry Irving, senior counsel to the House Telecommunications Subcommittee, who said Patrick's statement "smacks of arrogance," and that it is "ridiculous that the chairman of the FCC can not figure out that Congress does not have to wait for the FCC to act." □

Looking ahead to the 101st; more activity likely on fairness, must-carry, HDTV, cable issues

It may be far too early to read the tea leaves for next year, but it does seem a virtual certainty that much of the vigorous Hill oversight of the broadcast and cable industries, which has been the trademark of the 100th Congress, will continue and possibly accelerate when the 101st Congress convenes Jan. 3.

Last week as Capitol Hill prepared for adjournment, communications lobbyists and Hill staffers shared their thoughts with BROADCASTING on what lies ahead in the 101st Congress. There was a general consensus that lawmakers would pick up where they left off concerning the fairness doctrine, must carry, high-definition television, children's television and the issue of cable's growing market power and whether its competitors are being denied access to cable programing. But the ongoing negotiations between Hollywood and the networks over the FCC's financial interest and syndication rules could spill over to Capitol Hill. And the telephone industry's desire to enter the television business may generate some activity.

Reimposition of the fairness doctrine will be a chief priority. House and Senate leaders, Ernest Hollings (D-S.C.), chairman of the Senate Commerce Committee, and John Dingell (D-Mich.), chairman of the House Energy and Commerce Committee, have vowed to see it become law next year. Until that happens, other Hill action on broadcast issues will remain on hold as it has since the FCC abolished the doctrine in 1987.

Broadcasters should prepare for a busy season. Hollings promises to hold a series of hearings on children's television issues. The senator's broadcast reform legislation, introduced in 1987, could serve as a base from which he might act next year. It would impose significant programing and administrative obligations in exchange for a two-step license renewal procedure.

The industry may come under further assault as lawmakers will probably revive a bill that would guarantee that candidates be given a lower political advertising rate. Efforts to tax the industry's use of the spectrum and legislative proposals affecting broadcasters' advertising revenues are other areas of potential Hill action.

Some Hill watchers were predicting that Representative Tom Tauke's (R-Iowa) proposal calling for removal of antitrust restrictions so that broadcasters can come up with a voluntary code to regulate such things as children's television and violence, will gain ground next year. The Association of Independent Television Stations is already backing it. Some industry observers think Tauke's initiative will offer broadcasters an alternative to government regulation.

Tauke told BROADCASTING he will push the measure and is interested in building support outside Congress for the initiative. Senator Paul Simon (D-Ill.) has promised to move his television violence measure again.

With fairness settled, however, broadcasters would likely see a "serious run to codify some form of must-carry rules," predicted one House aide. "I don't know how we'll do must carry," said Larry Irving, senior counsel to the House Telecommunications Subcommittee, who pointed out that it has to be "done carefully" to create a record for rules that will pass constitutional muster.

According to Irving, Subcommittee Chairman Ed Markey (D-Mass.) wants to take a "good look at the future of the telecommunications industry." He intends to take a comprehensive approach to looking at all the issues, said Irving.

The development of high-definition television is another matter the subcommittee will focus on, said Irving.

As for cable, the subcommittee has no developed an agenda, although it will con vene the last of three oversight hearings i had planned to hold before adjournment. The FCC has tentatively concluded it shoul recommend that Congress lift the cross ownership ban on phone companies provid ing cable television services in their servic areas, and Irving anticipates the matter wi draw some interest.

And the FCC is conducting an inquir into cable's compulsory license which migh result in a Hill review of the matter.

As for the 100th Congress and some o the earlier forecasts that the cable industr was in deep trouble, National Cable Telev sion Association President Jim Mooney quickly pointed out that despite greater co gressional scrutiny, those assumptions "ha not yet manifested themselves in anythi tangible."

Mooney admitted there was a fair amou of "cable bashing by various of our compe tors and a few members of Congress to But, he continued, "that is not somethi that has been peculiar to our industry. Co gress exercises a lot of its power throu oversight, not just of government agenci but oversight of industries over which it h jurisdiction. Undeniably we've come in our share of criticism, but so have a lot other industries as well."

Nor does he think cable's standing been harmed by that criticism. The c struck between cable programers and National Rural Telecommunications Co operative (a noncable distributor serving ba yard dish owners) was "obviously regu by many in Congress as a sign of the cable industry's willingness to be responsive to members of Congress's concerns," he said. And NCTA's efforts to "try to work out some kind of resolution of the must-carry issue has been noticed up there too," said Mooney.

"The fact that must-carry was not addressed by this Congress was not our doing. That was really a function of differences some members of Congress had with the broadcast industry on another matter." (Mooney is referring to the fairness doctrine.)

As for the next Congress, Mooney hesitated to make any predictions. He does, however, think the telco-cable debate "may in the end" not be as much of an issue as many people anticipate it will be. Furthermore, he said he believes the issue is being driven by the trade press and "to a very significant degree by [FCC] Chairman [Dennis] Patrick."

Senator Al Gore (D-Tenn.), who failed to win passage of his controversial home satellite bill, is prepared to again battle with the cable industry (BROADCASTING, Oct. 17). But Mooney refrained from discussing what might occur on that front next year. He is, however, hopeful the backyard dish industry "at some point will devote its energies to marketing and pursuing business strategies."

Asked what the likelihood is for any future Hill action on cable's compulsory license, Mooney thinks it will largely depend on what happens with syndex. "If syndex sticks, I am not sure what the compulsory license issue would be because they no longer could say that they [broadcasters] are being deprived of anything that they should have. All syndex is, is a kind of retrenchment of the compulsory license." Reexamination of cable's compulsory license on Capitol Hill failed to materialize despite efforts on the part of independent television to make it an issue in the must-carry debate.

There are few signs that cable's critics will be any less vocal before the 101st Congress. Based on INTV President Preston Padden's assessment of what lies ahead, there will be continued pressure. "I think some of the collective voices of concern about what is going on in the communications marketplace are going to be heard in the next Congress. I think the heat is going to be greater than ever." Padden feels policymakers will want to "fashion something to put the house in order." □

Sketching scenarios for network-cable crossownership

Analysts say if FCC prohibitions are repealed, it's more likely an MSO might try to buy a network than vice versa

The FCC's proposed rulemaking to lift restrictions on broadcast network-cable system crossownership may be debated in the language of public policy. But whether any ownership changes actually take place, if the rules are changed, may more likely be decided by business considerations. The current view from Wall Street says that the three TV networks would encounter a maze of complications were they to attempt to take advantage of the proposed rule change. If anything, the proposed rulemaking, while understood as allowing ABC, CBS or NBC to buy cable systems, may more likely permit an MSO to buy a broadcast network.

Especially for NBC and Capital Cities/ABC, programing for cable is a higher priority than purchasing systems, analysts say. NBC is launching its Consumer News and Business Channel in 1989; ABC owns most of ESPN and part of Lifetime and Arts & Entertainment.

General Electric, NBC's parent corporation, appears most able to afford an extensive cable purchase, and has expressed the most interest in the recent move toward crossownership repeal. But before investing, "They want to see the cable-telco situation work its way out," said John Reidy, an analyst at Drexel Burnham Lambert. Capital Cities/ABC would have more limited resources, and CBS, which has $3 billion in cash reserves, probably would prefer to spend its money elsewhere. "Mr. Tisch does not buy things that are highly in vogue," Reidy said. The company has stated, moreover, that one of its major objectives is to continue station acquisitions so that its owned and operated stations, currently in markets covering about 21% of U.S. households, reach the maximum allowable 25% level. The cost of such a purchase, Reidy

Media agendas of Dukakis and Bush

Governor Michael Dukakis of Massachusetts is not saying "no" or even "maybe" to invitations to appear on television. Dukakis, who is trailing Vice President George Bush in the presidential race, will be the subject of a 90-minute interview on a special edition of ABC's *Nightline*, beginning at 11:30 p.m. NYT this Tuesday. Dukakis and his wife, Kitty, will appear for an hour on *Larry King Live* tonight (Oct. 24), starting at 9 p.m. NYT, on CNN. Those appearances followed the governor's appearances on ABC's *Good Morning America* and CBS's *This Morning* last Friday (Oct. 21). The Bushes were nowhere to be seen on any of that free media.

In fact, Dukakis's scheduled solo, face-to-face appearance with Ted Koppel tomorrow night in Denver, where the governor will be campaigning, is a consequence of the Vice President's refusal to participate in a 90-minute debate on *Nightline*. Dukakis had accepted the invitation to debate within a week of its issuance on Sept. 30. Bush made it clear he was not interested, but did not finally reject the offer until the day after his second televised debate, Oct. 13, during which he stated unequivocally his refusal to participate in any more debates. Koppel had said that if only one of the candidates accepted the invitation to debate, he would be asked to sit for a 90-minute interview.

Bush may yet show up on a special edition of *Nightline*. ABC News President Roone Arledge, during a press tour, said he would "entertain having the Vice President on," although he said that was not a commitment. Bush was already the subject of a lengthy interview on a special one-hour *Nightline* on June 4. The interview is remembered primarily because of the insistance of the Vice President—who was not in the studio with Koppel but was visible to him and the audience on a monitor—on calling the anchor "Dan."

Dukakis also appeared on ABC in a five-minute block of purchased time, on Saturday night (Oct. 22).

In his interviews with *GMA*'s Charles Gibson and *This Morning*'s Kathleen Sullivan, Dukakis explained his eagerness to accept invitations like theirs: "I want to get my message across in the final 18 days of the campaign." Bush last week had not yet responded to invitations by the two shows to sit for live interviews. Larry King was also awaiting an answer to an offer to the Bushes to appear on his show. He said a campaign aide told him the couple "might do it."

Dukakis, meanwhile, has decided to take advantage of another opportunity offered by *GMA* to get his message across. It will come in connection with Gibson's planned East-West tour of the country, examining issues in key states during the week of Oct. 31-Nov. 4. *GMA* invited each of the candidates to sit for taped interviews with Gibson on the issues. Dukakis has accepted. Bush last week had not responded. If he does not accept the invitation, a spokeswoman said, *GMA* will produce pieces on his positions.

A spokesman for the Bush campaign in Washington said the Vice President "hasn't ruled out appearances on television shows." But he said Bush was campaigning "on a personal level in media markets."

WSJ 11/16/88

Kastenmeier clears the set

Bill to aid satellite TV reception

By Gail Harkerry
Washington bureau

WASHINGTON — Madison, its surrounding towns and other rural areas across the nation are expected to receive better satellite television reception soon, thanks to a new bill authored by Rep. Robert Kastenmeier, D-Wis.

Passed by Congress last month, the Satellite Viewer Copyright Act is designed to give people in remote rural areas who may not be able to get broadcast television "the means to view the programming that most Americans get by simply punching on the set," according to Sen. Patrick Leahy, D-Vt., the bill's Senate sponsor.

"It creates rights for the public to receive television signals at a reasonable rate and will benefit the proprietary because the system operates under copyright law," Kastenmeier said.

In many rural areas, viewers lack access to cable television and are too far from a station affiliate to receive network programming. Many rely on satellite dishes to pick up broadcasts from the feeds of the major networks.

There are approximately 600 affiliates of the three major networks — ABC, NBC, and CBS — around the country, but each affiliate can reach only a limited geographic area.

Many affiliates have pressured the networks to scramble their signals, claiming the new technology cut the audience of their programming and advertising. Rural homes with dishes generally get the big networks' commercials, but not those of the affiliates.

NBC scrambled on Nov. 1, CBS threatened to scramble back in March, and ABC is still considering it.

Harry Thibedeau, director of broadcasting and media sales for the Satellite Broadcasting and Communications Association, said approximately 4,500 Wisconsin households use a satellite dish.

"A sizable percentage of the total number of satellite dishes produced each year in the United States are manufactured within a 50-mile radius of Madison, Wis.," Thibedeau added.

Pam Zander, co-owner of A to Z Electric Inc. in Cross Plains, said her dealership sells primarily to people living in the country.

"I've had quite a few calls from people in rural areas complaining that they just aren't receiving certain stations," Zander said.

Zander said her company makes some sales in Madison because "Madison channels are also limited."

Dollie Slaten, who lives about 20 miles from Madison in rural Verona, bought a satellite dish before cable came into her area a year ago. She and her husband bought a superstation programming package about two months ago to get a wider variety of channels.

"We lived here 10 years before cable came into our area," Slaten said. "The satellite dish was the only way we could get any stations out here.

"We didn't buy cable when it came to our area because we already had the dish," she added, "so we just bought a program package instead."

This recent provision of the bill is part of a larger measure that requires the Federal Communications Commission to report to Congress on whether dish owners are paying high rates for satellite programming because of price discrimination.

The bill also ensures that copyright penalties can be imposed against carriers who unlawfully discriminate against distributors in the selling of retransmitted signals.

The measure was passed in the House of Representatives on Oct. 19 and the Senate version was approved two days later. A compromise version is expected to be signed by President Reagan in coming months.

Kastenmeier said the expanded availability of network signals to unserved areas will create "parity between urban and rural dwellers."

"It's hard to believe that the science fiction writer (Arthur Clarke) laid out the blueprint for the current system of transmitting television signals by television only four decades ago," Kastenmeier said. "We have much to look forward to in the next four decades."

Critic recognized

Michael St. John, rock critic for The Wisconsin State Journal, has been named Music Journalist of the Year by the Wisconsin Area Music Industry.

St. John, whose weekly column appears Thursdays in The State Journal, received the WAMI award Monday night at The Pabst Theater in Milwaukee.

Wisconsin musicians, concert promoters, broadcasters and writers belong to the organization.

DITIONAL

QUESTION:
What Kind Of People Go To Chiropractors?

Of the Superstation Bill, the SBCA/STTI Show, and GI's Anti-piracy Plan

EDITORIAL

It is the view of this publication, as regular readers know, that the answers to the satellite TV industry's problems generally do not lie on Capitol Hill. In recent months, however, an exception to that view has been H.R. 2848, the superstation copyright bill. It seemed clear a clarification of the 1976 Copyright Act was necessary to clear-up any legal ambiguity concerning TVRO subscriptions to superstations.

But what should have been a simple change in the law's language has become yet another attempt by the broadcasting and motion picture industries to thwart the growth of the satellite TV industry. And even though it appears the bill's chances for passage are diminishing by the day, the position of the TVRO industry on the issues raised by the legislation should be clearly stated as a mark-up on the measure approaches.

First and foremost, the satellite TV industry cannot accept any so-called "white area" limitation on where the bill would apply to dish owners—whether for network or independent TV signals. To do so would make TVRO owners second class citizens by statute and be in direct contrast to the principles which led to the founding of the satellite TV industry. The networks and independent broadcasters have put forth nothing but bogus research to prove TVRO reception of superstations harms local stations. Indeed, the entire debate over the superstation bill has once again demonstrated the arrogance of the broadcasting industry in general.

Similarly, the satellite TV industry can never accept any amendment which would limit the measure to C-band and ignore the potential of Ku-band. The Motion Picture Association of America's advocacy of this amendment raises questions about Hollywood's recent claims it supports the development of satellite TV.

The common sense approach to this legislation—one which would allow all the industries involved to spend their time more efficiently—would be to clarify the law by simply extending to the TVRO market the compulsory license which allows superstation carriers to uplink broadcast stations to cable systems. The almost 2 million homes which own TVRO systems are not the issue here; the very existence of the compulsory license is and fairness dictates the license should be extended to all technologies until such time its fate is determined.

That is not to say the TVRO industry should stand by and watch Hollywood, cable, and the broadcasters fight over the future of the compulsory license. Rather, the satellite TV and cable industries should put their differences aside and unite to fight any repeal of the compulsory license and the re-imposition of syndicated exclusivity. Taken by itself, the compulsory license may be as some have called it a "regulatory anachronism." But it is clear the license works in the overall scheme of things. To repeal the compulsory license would be a blow against diversity and choice for all TV viewers. There are philosophical questions raised by any "compulsory" access to intellectual property, yet to start dismantling the entire video marketplace to appease program producers would be an egregious error.

To be sure, there are some risks involved for the TVRO industry if the superstation bill is not passed. Satellite Broadcast Networks (SBN) could lose the copyright lawsuits brought against it by the networks, which would raise serious questions about the future availability of all superstations to dish owners. But the SBN case could take years to wind through the courts, and the company could win the case. In the meantime, the satellite TV industry should take a lesson from Hollywood's battle to stifle the growth of home video through the "Sony-Betamax Case." In that instance, the VCR manufacturers realized that each unit sold represented just another reason why Congress would have had to act to permit home taping—even if Hollywood had won the case before the Supreme Court. Similarly, if SBN should happen to lose, Congress will have little choice but to act to permit the reception of superstations directly from satellite by thousands, if not millions of American homes. Moreover, if past actions are any indication, the TVRO industry can count on copyright subcommittee Chairman Bob Kastenmeier (and chief aide Michael Remington) and Rep. Mike Synar (and aide John Haller) to help in the struggle for fair treatment of dish owners.

Finally, this publication's view on the superstation bill should in no way, shape, or form be construed as advocacy of the position on the bill propounded by K-SAT Broadcasting and the Home Satellite Television Association (HSTA). The K-SAT/HSTA opposition to the bill has hurt the TVRO industry in Washington and is based on the utterly fallacious theory that the superstation carriers must be breaking the law if a bill is needed to clarify the statutes. Did K-SAT's Chuck Dawson feel the same way when he was operating video stores before the "Betamax Case" was resolved?

Likewise, this publication believes Dawson's recent announcement that he intended to uplink TBS and WGN in the clear should be dismissed as nothing more than a publicity stunt. Though Dawson does deserve some credit for being able to generate so much publicity for such a unrealistic idea, the episode also demonstrated how little the rest of the world understands satellite TV. Anyone familiar with the economics of uplinking a superstation, and the contracts between most cable operators and superstation carriers, should have instantly realized Dawson's plan was an economic pipe dream. That is why the idea did not receive any coverage on these pages. Dawson's time (not to mention his considerable talent as a showman) would be better spent on his efforts to combat piracy, unfair zoning laws, and some of the other issues facing the satellite TV industry.

The Show

As the TVRO industry gathers for its annual winter-spring show in Las Vegas, its reputable members should strongly applaud and commend the decision by STTI and SBCA not to give the United Satellite Industry Association (USIA) free meeting rooms and discount booths at the show. The USIA has been largely ineffectual and somewhat destructive in its year of existence, and allowing it to use the good auspices of the show to promote itself was a bad idea in the first place. The moral fiber of several of the USIA's leaders are questionable at best and the satellite TV industry would be far better off without them and the USIA.

Along the same lines, this publication loudly cheers the decision by STTI and SBCA not to provide press credentials to cover the show to Shaun Kenny's Boresight program. As this publication has said before, were Boresight solely guilty of unprofessional, incredibly inaccurate reporting, we would be standing shoulder to shoulder with Boresight in defense of its First Amendment rights. But stealing programming is not protected by the First Amendment and Boresight is a journalistic abortion. Kenny, his airhead southern sidekick, and his entire piracy promoting program are a cancer on the satellite TV industry. Members of the TVRO industry who in any way aid, abet, or otherwise support Kenny and Boresight are committing financial suicide and may as well hang a "going out of business" sign in front of their stores today.

The Anti-Piracy Plan

Lastly, this publication is compelled to comment on the recent anti-piracy proposals offered by General Instrument Corp. (GI). As reported on page one, GI's basic idea was to raise the price of VideoCipher decoding units by $250 and include coupons with them for about $275 of programming.

Many in the TVRO industry have praised GI for realizing that piracy is out of hand and considering dramatic ways to combat it. That view is shared here. Yet even though piracy is rampant and an immediate solution necessary, such a dramatic step requires careful consideration and industry-wide cooperation. GI has taken some initial steps to improve its relationship with colleagues in the satellite TV industry, should be lauded for its behavior, and encouraged to continue the effort.

Though the concept of establishing an "economic disincentive to piracy" may hold some promising ideas, the plan as offered by GI is flawed. Even if the myriad of legal, logistical, and public relations questions posed by such a scheme could be ignored—which they cannot—the GI plan has one fatal shortcoming: it raises the cost of entering the market for scrambled satellite signals at a time when that cost should be headed down.

It is probably unreasonable to expect that satellite piracy can be completely eliminated, given the nature of the hacker underground and technical characteristics of the VideoCipher system. Even so, the satellite TV industry can strike a powerful blow against piracy by offering consumers low-cost decoders and reasonably priced programming. Some limited progress has been made on the latter, but raising the price of descramblers is a step in the wrong direction. Overpriced decoders and programming are obviously no justification for piracy, but are the most formidable obstacles to the satellite TV industry's recovery. ❑

Washington Post ___ date 10/88 page 1 col 3 top right
New York Times ___
Wall Street Journal ___
other CATACABLE
(Community Antenna Television Association
Fairfax, VA)

Gore Bill Dies—Kastenmeier's Wins Approval

It is rare that we are able to report both good news and good news from Capitol Hill. But that is the case this month. Largely as a result of the efforts cable operators have made over the past several months to fully explain the "satellite scrambling" issue and the attendant problems surrounding "third party distribution," the Senate has voted to table Senator Gore's satellite scrambling bill. The vote, on a procedural motion, was 43 to 36 in favor of the cable industry position.

As we have been warning you for months, it seemed, Senator Gore was going to bring his bill to the Senate floor for a vote ". . . at any time." First we thought it would come before the Democratic Convention, then between the two conventions, then right after the convention recess, and on, and on. We kept asking you to write to your Senators and call them, again, and again. Of course the State Associations and the NCTA were saying the same thing—and happily it seems that with all of us yelling at you, you responded. The result was that by the time Senator Gore finally did attempt to bring his bill to a vote, on a Friday evening just before the final week of the Congressional session, the Senate was ready for it.

See Gore Bill pg. 3

Gore Bill cont. from pg. 1

There was about an hour and a half debate—mostly statements by those who have long been in favor of the Gore Bill. The principal Senate opponent of the measure for debate purposes was Senator Tim Wirth. He did the opening, and Senator Dan Inouye of Hawaii, Chairman of the Senate Subcommittee on Telecommunications, did the procedural maneuver that put the issue up to a vote. Gore had tried to include the bill as part of the Senate's consideration of technical corrections to the tax code. The motion was to "table" the proposed amendment. It passed and the issue, we trust, is now over. At least for this year. We can expect that questions regarding cable program exclusivity will arise again in the next Congress, but we doubt that the "Gore Bill" in its present form will ever be seen again.

Another bill, authored by House Copyright Subcommittee Chairman Bob Kastenmeier, does have a strong chance of passage in the last hours of this Congress. Hopefully we can indicate the outcome on these pages before we go to press. The Kastenmeier Bill has been passed by the House and is awaiting action in the Senate.

The Kastenmeier Bill is a very strong piece of legislation and is heartily endorsed by CATA and, indeed, the entire cable television industry as well as the earth station industry. It started out as a bill designed to deal with the "superstation" problem. That is, there did not appear to be any legal way for home earth station owners to receive and pay for "superstation" programming because the Copyright Law had not contemplated such things as "superstations" and they simply were not covered by the "compulsory license."

There was an argument that the existing law could be "stretched" to include the sale of "superstation" programming by the common carrier (United Video, SBN, NetLink, etc.) to the public so long as the carrier was considered a "cable system" for such purposes. But a federal court in Atlanta recently ruled that was stretching things a little too far and said that Congress would have to change the law if such actions were to be considered legal.

The proposed change, to grant a "compulsory license" for a limited time, to the carriers to allow them to sell broadcast signals directly to the public had been in the works for some time. There are restrictions, of course. The compulsory license sunsets after six years. In the first four of those years a flat fee per subscriber of 12 cents would have to be paid. After that the parties would have to negotiate the fee (subject to compulsory arbitration) for the remaining two years. Other provisions that were added along the way include one that would allow the distribution of network signals to home earth station viewers, but only in those areas not served by a network affiliate or by cable. This one is going to be fun to administer!

The bill also requires the FCC to do some studies regarding applying syndicated exclusivity to the home earth station market. We can tell you the outcome of that one right now! The FCC can't even figure out a practical way to apply syndex to cable operators—let alone to the home market! They also have to study discriminatory pricing complaints and the possibility that there should be technical standards set for satellite programming descrambler equipment.

See Gore Bill pg. 4

Gore Bill cont. from pg. 3

That last provision was added during a rapid mark-up of the bill by the House Telecommunications Subcommittee which insisted on a chance to look at the bill after the "syndex" language had been added. It seems that everyone on Capitol Hill is very jealous of turf, and when the folks on the Judiciary (Copyright) side started saying anything that remotely sounded like it was involved with telecommunications policy, such as "syndex," the Commerce (Telecommunications) Committee jumped in and said it had to review the bill too.

Well, that turned out to be a real bonanza for everyone. The first fear was that Congressman Billy Tauzin, who had introduced a measure very similar to the Gore Bill, would try to use the "superstation" bill as a vehicle to get that other piece of legislation moving. Preparations were made for a fight. But at the last minute Cong. Tauzin reached an agreement with the cable and the home satellite industry representatives whereby only those parts of his bill that everyone agreed with would be added to the Kastenmeier Bill. One of those provisions was the FCC study on scrambling technology. The other was far more important: it has to do with significantly strengthening the Communications Act with regard to piracy.

The new provisions would not only put more teeth in the criminal provisions of the law, increasing the penalties to $500,000, but also make it far easier to bring a civil case against those who sell illegal "black boxes" designed to steal satellite cable signals. This is a key provision. The biggest problem dealing with both TVRO and cable theft of service (and it is important to note that this new law would apply to BOTH) has been to get local, state or federal attorneys interested enough in the issue to collect the evidence and prosecute the cases.

With this new law, assuming it passes, we will not have to convince governmental authorities to do the work and bring the cases. They, after all, have lots better things to do. The civil provisions of this bill, however, would allow any cable operator, any satellite programmer, and HTVRO dealer to bring a civil suit against anyone selling devices designed to steal cable satellite signals. A finding that there has been the knowing sale of a device designed to steal such signals brings with it the potential of a punitive award to the injured party (the cable operator, etc.,) of up to $100,000 PER OFFENSE—that means per unit sold, according to the bill. And, as a bonus, those found guilty may be assessed the legal fees of the person or company bringing the suit as well! Now that's a set of teeth if we ever saw one!

The bottom line here is that this bill could spell the end of theft of cable satellite service—both in the TVRO and the cable marketplace. It will become so expensive and so dangerous to sell those "black boxes" that the underground industry should dry up. That will be a huge benefit for all of us.

The addition of those provisions to a bill that the cable industry had already indicated it would support has resulted in a last-minute push to assure passage. Stay tuned.

***Last minute update:** As we are going to print Congress has passed the Kastenmeier bill and it now awaits the President's signature.*

APPENDIX IV.—MISCELLANEOUS CORRESPONDENCE

COMMITTEE OF 435
7204 South Yarrow Street
Littleton, CO 80123
(303) 973-8201

January 27, 1987

Congressman Robert W. Kastenmeier
2328 Rayburn House Office Building
Washington, DC 20515

Attention: Mike Remington

Dear Mr. Kastenmeier:

My husband and I wish to take this opportunity to thank you for facilitating the live coverage of the Committee hearings on Copyright and Civil Liberties regarding HR2848. The live coverage by K-SAT Broadcasting and its thousands of listeners and supporters is the only way that those of us concerned with these important issues can keep informed. To leave it to local broadcasters and/or the cable-owned C-SPAN would leave us, as usual, in the dark.

We sincerely wish to thank you for also speaking with us after the hearings and sharing your astute observations and concerns with us. It is always encouraging to meet with a legislator as genuinely concerned about small retailers and average Americans as you have proven to be.

As you so thoughtfully stated, there will probably be changes made in HR2848 before leaving the mark-up proceedings of the committee. The enclosed letter to our own Colorado representative on the committee will give you some idea of where our real-life observations have led us.

Our ideas for changes is in no way meant as critical comments on you or your staff. Rather, they are carefully considered suggestions we sincerely feel would help HR2848 more closely coincide with your original intentions for the welfare of us all. You originally wished to make sure that ALL Americans had access to programming signals through independent choice of method and non-discriminatory pricing.

Thank you again for your leadership and kind consideration. Please tell Mike "hi" and thanks again for taking the time to let all of us out here make our mutual concerns be heard.

Respectfully,
Shirley Johnson
Shirley and Chris Johnson

Littleton, CO 80123
(303) 973-8201

January 27, 1988

Congresswoman Patricia Schroeder
2410 Rayburn House Office Building
Washington, DC 20515

Dear Ms. Schroeder:

Thanks to the private donations and personal efforts of K-SAT Broadcasting and its supporters, my husband and I were able to listen to the live hearings held in the Committee on Copyright and Civil Liberties concerning HR2848. We would certainly not been able to do this if left to the local broadcasters or the cable owned C-SPAN.

We appreciate your questions to the second panel. We understood your questions as an effort to elicit information relevant to a balance between the rightful collection of fees to the original copyright holder and the access, choice of reception method at non-discriminatory prices of the American citizens. The arrogant disrespect shown to you by the answering owner of cable-owned Netlink is disturbingly all too familiar to those of us in America confronted with the reality of a vertical monopoly of the communications industry.

Following are points we feel particularly interesting;

1. Common carriers are in violation of existing regulations and are now owned and operated by cable companies. They are no longer a 'common carrier' but programmers just like HBO. They are using discriminatory practices both by withholding programming to other distributors and discriminatory in their pricing. The discrimination of pricing exists in both the wholesale programming and copyright fees. Cable-owned common carriers are asking for permission to further withhold signals through the limitation of frequency and reception technology. Cable-owned common carriers are asking for the legitimatization and therefore a reward for the violations they are presently committing.

2. Networks are claiming protection for localization and from cable companies but want to,

   a. maintain discriminatory practices against independent broadcasters

   b. distribute non-local affiliates to dish owners through a 'policing action' and have the continuing right to throw off local broadcasters from local cable companies to be replaced by cable-owned Netlink package

   c. have a mandated monopoly to distribute nationally chosen programming through cable-owned Netlink package 'deals'.

d. a legal sanction to resell copyrighted programming that has not been previously contracted for resell, i.e., sports, movies, PBC(B), etc.

e. a legislated mandate to prevent competition from entering the distribution process.

3. the hearings also brought out the interesting fact that trying to accurately define a 'white' area was discriminatory to the citizen wishing a choice of programming reception method, to the independence and competitive capabilities of the original copyright holder, the holders of independent exclusive copyright holders and the local broadcast stations. The cable companies and national non-licensed networks are violating with impunity their own contention of encouraging signal availability while protecting localization.

It saddened us to know you did not feel the views of independent distributors, small retailers and American consumers was sufficiently important to require your attendance at the third panel. If you had stayed to ask your usual astute questions you would have learned of the recommended changes to HR2848 that would go a long way in making the bill supportive of the intended purpose.

These recommendations are:

1. Clarification of the role of licensed FCC common carriers AND AT THE VERY LEAST, mandating the sale of their signals to ANY distributor at non-discriminatory wholesale prices AND separately billed non-discriminatory copyright fees.
2. Clarification of the right of access to ALL signals on ALL frequencies by ANY reception method AS LONG AS the non-discriminatory copyright fees are paid.
3. Access to local broadcasts NOT be limited except by the choice of the viewer through the RE-INSTATEMENT of the 'must carry' rules (local cable companies MUST be required to carry ALL local broadcast stations).
4. All congressional committees insist on the immediate enforcement of existing laws and regulations.
5. ANYONE at ANYTIME be allowed the business opportunity to uplink programming in a truly competitive market WITHOUT asking permission of ANY cable interests.
6. To encourage access, non-discriminatory pricing and competition by leaving the bill in place indefinitely.

Thank you for taking a personal interest in these proceedings and for being the type of representative who has the ability for SELF-determination needed by and for ALL Americans.

Respectfully,

Shirley and Chris Johnson

K-SAT BROADCASTING INC.

COMMITTEE OF 435

"We The People"
RICK ALDRICH
[illegible] Byers Road
Pasco, Washington [illegible]
Telephone [illegible]

September 28, 1987

The Honorable Robert W. Kastenmeier
United States House of Representatives
House Office Building
Washington, DC. 20510

Re: H.R. 2848 The Copyright Bill

Dear Congressman Kastenmeier:

First of all I would like to thank you for your concern regarding the satellite industry. I was in Washington D.C. when you introduced your bill H.R. 2848 and was able to speak with your aid (Mike Remington) for several minutes.

Unfortunately I do not agree with several parts of H.R. 2848 and I have therefore found it necessary to send the enclosed letter to all of my congressman in Washington State as well as several others nationwide. Although I feel you had very good intentions when you wrote this bill I believe you were grossly misinformed by the cable monopoly prior to writing it. Please understand that I am fully aware that the copyright issue must be addressed before the satellite industry can reach its potential but if this bill is passed as it is written the dish industry is dead! If this bill is rewritten so that it allows the dish industry to compete and pay a fair and equal copyright fee then I and many others would find it easier to support its passage. By restricting the ability of new channels to launch without first checking with the cable industry is to allow an already established monopoly to control the free flow of information in this country. I am sure you do not want this to happen. Neither do I or any other member of the K-SAT organization. Thank you for your time and concern regarding the satellite television industry.

Sincerely,

Richard Aldrich

Richard (Rick) Aldrich
Zone 1 Commander
K-SAT Committee of 435
Washington State Division

K-SAT BROADCASTING INC

COMMITTEE OF 435

"We The People"

RICK ALDRICH
[illegible]
Pasco, Washington [illegible]
Telephone [illegible]

September 28, 1987

The Honorable &NAME&
United States House of Representatives
House Office Building
Washington, DC. 20510

Re: H.R. 1885 The Satellite Television Fair Marketing Act of 1987
and H.R. 2848 The copyright Bill

Dear Congressman &SALUTATION&:

On June 30th of this year Congressman Kastenmeier introduced legislation in the House regarding copyright fees to be paid by common carriers of satellite television transmissions. There are several areas of this bill that do not in any way help the satellite industry.

First it sets a copyright fee of 12 cents per month per superstation subscribed to by individual dish owners. This may be found on page 5 line 23 and conclude on page 6 line 1. This does not sound like an excessive amount but the average price nation wide that a cable subscriber pays in copyright fees per superstation per month is .005 cents per month. As you can see this fee is 1/24th what we as dish owners would be required to pay. We as dish owners would again be penalized by the cable cartel by paying not only our fair share, but in fact pay for 23 other cable subscribers. It is not surprising to me that the cable association (NCTA) supports this bill in its entirety on this section alone! It benefits their part of the industry and does away with any part of the industry trying to create competition. On this section alone this bill should never pass, or for that matter even be considered but unfortunately it gets worse.

The second part of this bill that creates a problem for the dish owner may be found on page 17 line 25 and ends on page 18 line 22. This section deals with the definition of a superstation. It states that if a station is to be considered a superstation then it must have been uplinked (on satellite) and available for nationwide distribution on June 1, 1987. It further states that any new station may be considered a superstation provided that it is carried by 10% of all cable companies and is viewed by its subscribers. This definitely effects all new stations wishing to serve the satellite dish industry. If for example a station decided it wanted to uplink and serve via satellite anyone who wished to subscribe, it first would have to sell its signal to at least 10% of the existing cable companies. Since only a few corporations own and operate all cable companies nationwide, this would create a major problem for that station. They would in fact be dealing with the same monopoly that we as dish owners are now. It would give the cable cartel total control over how many stations would be uplinked. This in turn would limit competition, benefit the cartel and increase their anti-competitive position and increase their control on the information and entertainment available to the American public. The cable cartel needs competition, not congressional help in increasing its handle on the control of programming.

The cable companies are an uncontroled, deregulated monopoly that must be halted immediately. If this bill is passed, the 240 million citizens in this country will suffer. Can we as a free society allow a small group of corporations to control the free flow of information in this country? Can we allow them to decide who will be successful in the broadcasting industry and who will not? I say absolutely NO! If congress passes this bill as it is written that is exactly what it will be doing. This bill is backed by the cable companies because is does everything in their favor and absolutely takes away any possibility of competition. You and your fellow members must not allow this bill to pass. There are 444 transponders available on the C-Band satellites now in use today with an additional 128 on the KU-Band. Thats 572 potentially different stations and diverse viewpoints. Are we going to limit them in number? Passage of HR 2848 will effectively do just that.

The consumers and dealers of the satellite industry need a win on capital hill, and we need it this year! Failure to pass HR 1885 will effectively kill this industry as you and I know it today. By passing HR 2848 as it is written, you will be giving the cable industry a free hand at no longer having to string their wire. They will simply go house to house and extending their hand into the wireless cable industry. We know that industry today by the name of The Satellite Television Industry or TVRO. As a consumer I enjoy the variety I receive with the use of my satellite dish. When we allow a very small group of corporations to create and continue to operate a monopoly that involves the information you and I receive, this country is in deep trouble. HR 2848 must not be allowed to pass as it is written.

The only bill before The United States House that will guarantee the American public that there will continue to be fair competition in the distribution of satellite programming and information is HR 1885. Please support, co-sponsor and call for immediate markup of HR 1885. Urge your fellow members to do the same. The state of Washington only has two co-sponsors of this legislation, Congressman Al Swift and Sid Morrison. Above all, when HR 1885 comes before the House, vote in favor of it. Thank you again for your time.

Sincerely,

Richard (Rick) Aldrich
Committee of 435
Washington State Division

WILLIAM J. QUINLIVAN
11-4 Delta Street
Emmonak, Alaska 99581
January 22,1988

The Honorable Robert W. Kastenmeier
Rayburn Building
Room #2328
Washington, D.C., 20215

Dear Representative Kastenmeier:

It has come to my attention that the final hearings on HR. 2848 before the Copyright Committee of the Judiciary sub Committee on Courts, Civil Liberties and the Administration of Justice, will take place on the 27th of January 1988

I feel very strongly about the issues involved in HR2848 and think they are very important, particularly to Alaska since the geographical size of our state and the small size of the majority of our communities makes us totally dependent on Satellite Telecommunications. The Home Dish Satellite Industry is going to play an increasingly more significant role in the lives of all our citizens as the only source of news, information and entertainment. I am sure this is true for many of the other states as well.

I have followed this industry since its inception in the late "70s" and finally purchased my own dish this past year. I have also operated our Municipal Cable System for the past five years and do not think the Cable Industry should should have any control over what the individual can receive with their own home systems. They are each a separate and distinct entity. It appears that the Cable Industry is trying to exert pressure and control over the Home Satellite industry. An example,is the fact that I as an individual can only subsribe to the Netlink Package of Programming if our local Cable System will become an affiliate of Netlink. Why should this be? They are over 2000 miles away and in a different state. They shouldn't be allowed to have this amount of control.

The Bill as it is presently written only favors and gives more control to the unregulated Cable Cartel. It does not contain anything which would really benefit the Home Satellite viewer nor spur the growth of this Industry. I believe the following eight points which were originally suggested by K-Sat Broadcasting should be considered for inclusion into HR2848 to make it more Home Dish friendly. I would rather see the bill killed if these points are not given any consideration. These eight points provide provisions to the bill which would really make it non-discriminatory to the Home Dish owner and viewer.

1. Parity in Copyright payments with cable (non-discriminatory)

2. Parity in Programming Prices with Cable (there is nothing to prevent non-competitive pricing practices)

3. Remove limits on Grandfather clause (why mandate Cable control by limiting the number of Superstations)

4. Remove the number of Cable Subscribers minimum clause (Why should a percentage of Cable coverage determine whether or not a Programmer may be on the air)

5. Non-Discriminatory distribution of programming (there is nothing to prevent programmers from refusing to sell programming)

6. No Sunset Clause (There is no sunset clause on the Cable Industry, why should there be one on the Satellite industry)

7. Allow for any station to uplink themselves (under #2848 only the cable/programming cartel can uplink, Common Carriers are exempt from Copyright fees so they can now be active carriers, if the Common Carriers can be active then why can't anyone uplink themselves ?)

8. Access (There is nothing in #2848 that says programming has to be sold or given to anyone, There is no MANDITORY ACCESS provision for the Home Satellite user)

Finally, I would ask you to please give these points your every consideration when this bill comes up in the hearings on January 27,1988.

Thank you very much.

Sincerely yours,

William J. Quinlivan

WHNS TV

February 3, 1988

The Honorable Robert W. Kastenmeier
U. S. House of Representatives
2328 RHOB
Washington, DC 20515

Dear Representative Kastenmeier:

Our station has invested millions of dollars in exclusive license agreements for television programs. H.R. 2848 is supposed to be a bill to help bring TV service to rural satellite dish owners. However, it would grant "satellite carriers" a statutory license to exhibit in our market the very same programs for which we have purchased an exclusive license.

As a recently established Independent television station which is diligently striving to address the community needs and concerns of our service area, we believe it is absolutely imperative that our exclusive license agreements for television programs be maintained and enforced within our local market areas. It is all too obvious that home satellite dishes are not restricted to the so-called "white areas," but can be seen in any area of a given marketplace regardless of off air reception quality.

H.R. 2848 should be amended to apply only to so-called "white areas" where residents do not receive adequate service from local TV stations. This amendment should not make any distinction between Independent sations and network-affiliated stations.

Sincerely yours,

PAPPAS TELECASTING OF THE CAROLINAS, INC.

Joseph A. Shaffer

Joseph A. Shaffer
Vice President/General Manager

JAS/jac

PAPPAS TELECASTING
OF THE CAROLINAS, INC.

GREENVILLE OFFICE
21 Interstate Court
Greenville, SC 29615 ☐ (803) 288-2100

WPTT-TV 22
PITTSBURGH

P.O. BOX 2808, PITTSBURGH, PA 15230 (412) 856-8010

February 5, 1988

The Honorable Robert W. Kastenmeier
U.S. House of Representatives
2328 RHOB
Washington, DC 20515

Dear Representative Kastenmeier:

It seems as though over at least the past two years whenever we in broadcasting see some sign that members of Congress may be seriously considering that the framers of the 1934 Communications Act knew what they were doing, some new idea is considered which strikes at the very heart of the broadcasting/government relationship embodied in that act. It also appears to me that most of these ideas, whether dealing with cable, DBS, or whatever are espoused in the name of benefiting the consumer. Obviously, to someone engaged in the business of politics and balancing to the best of your ability the needs of your constituents with the needs of the State, anything which is purported to benefit the consumer would have a great attraction for you. May I strongly urge you before you rush headlong to benefit the consumer, to consider the short and long term effects that HR 2848 would have on the very fabric of the broadcasting business in this country. As it is, some basic principles which must govern the way in which we do business, specifically marketplace exclusivity of broadcast program usage, will be jeopardized one more time by the provisions of this bill.

Our station has invested millions of dollars in exclusive license agreements for television programs. H.R. 2848 is supposed to be a bill to help bring TV service to rural satellite dish owners. However, it would grant "satellite carriers" a statutory license to exhibit in our market the very same programs for which we have purchased an exclusive license.

H.R. 2848 should be amended to apply only to so-called "white areas" where residents do not receive adequate service from local TV stations. This amendment should NOT make any distinction between independent stations and network-affiliated stations.

Very truly yours,

Charles L. Hobbs
General Manager

C: Jim Hedlund
INTV

26KMPH

Fresno Offices and Studio
5111 East McKinley Ave
Fresno, CA 93727
[illegible]
TWX 910 [illegible]

Pappas Telecasting Incorporated
Visalia/Fresno

February 8, 1988

The Honorable Robert W. Kastenmeier
U.S. House of Representatives
2328 RHOB
Washington, DC 20515

Dear Congressman:

Our station has invested millions of dollars in exclusive license agreements for television programs. H.R. 2848 is supposed to be a bill to help bring TV service to rural satellite dish owners. However, it would grant "satellite carriers" a statutory license to exhibit in our market the very same programs to the same viewers for which we have purchased an exclusive license.

We have carefully negotiated exclusivity agreements which include protection against, among other things, importation of programs to which we own the rights via direct-to-home satellite. In fact, our standard contract language was presented to your subcommittee as a part of testimony of the Association of Independent Television Stations on January 27, 1988. As you can see, we believe this issue to be critical to the survival of independent broadcasting.

H.R. 2848 should be amended to apply only to so-called "white areas" where residents do not receive adequate service from local TV stations. This amendment should not make any distinction between Independent stations and network-affiliated stations.

Sincerely,

PAPPAS TELECASTING INCORPORATED
26 KMPH

LeBon G. Abercrombie
Sr. Exec. Vice President/General Manager

LGA/kjp

WATL 36

February 9, 1988

The Honorable Robert Kastenmeier
U.S. House of Representatives
2328 RHOB
Washington, DC 20515

Dear Congressman Kastenmeier:

May I ask your help on a very critical issue affecting the future viability of this station and our service to the greater Atlanta area. We have commitments in excess of $60 million on our books in exclusive license agreements for television programs. It is my understanding that H.R. 2848 is supposed to be a bill to help bring TV service to rural satellite dish owners. Unfortunately, it would grant "satellite carriers" a statutory license to exhibit in our market the very same programs for which we have committed millions supposedly on an exclusive license.

I'm asking you to amend H.R. 2848 to apply only to so-called "white areas" where residents do not receive adequate service from local TV stations. This amendment should most certainly not make any distinction between independent stations and network affiliated stations.

It's difficult enough surviving competitively in this big market but it's suicide if we can't enjoy the benefits of exclusivity on the product we purchase which was sold to us on an exclusive basis.

I would sincerely appreciate your help on this critical subject.

With kindest regards,

John A. Serrao
Vice President
& General Manager

9909 Lange Rd.
Newton, WI 53063
January 18, 1988

Rep. Robert Kastenmeier
2328 Rayburn House Office Building
Washington, D.C. 20510

Dear Mr. Kastenmeier:

We are satellite dish owners and have some problems with H.R. 2848 in its present form. We know you will consider our views and concerns; however, we would appreciate your specific answers to the following questions.

1. In regard to copyright fees and programing prices: Why are there distinctions in formulas and prices being charged to dish owners? Why is a different value being placed on "The Wheel of Fortune" because of the delivery method? We cannot understand this; please explain this to us. It seems to us the value of the program is the same regardless of the delivery method, and H.R. 2848 should reflect this position. Please tell us why we are being asked to pay more than the cable consummer who views the same program.

2. If the value of copyright fees and program prices are the are the same for all, why would there be a need for a sunset provision? If prices are changed, they would change for everyone regardless of the delivery method. If you do not think this is fair please explain why.

3. Please explain why programming services started after June 6, 1987, will not be allowed to service dish owners. Why not? Are we second class citizens? Please explain this.

4. Why must a new programming service have a 10% penetration in the cable market before they can launch the service? Does this mean that if we want to open a grocery store we have to guarantee 10% of our profits go to existing grocery stores before we can open the door? It sounds that way to us. Why would we have a law like this?

Mr. Congressman, we are not asking you for money. You don't have any. You have the country nearly three trillion dollars in debt. We are asking you to provide a level playing field for the home dish industry and the consumers of the products and programming services.

We are avid viewers of C-SPAN, and recently we have heard a lot of jawboning about job creation and budget deficits. In the meantime, past legislation has destroyed the businesses of many manufacturers, distributors, and dealers in the home dish industry. You are destroying the people whose taxes you depend upon to finance the voraciou spending habits of congress. Why? What are we missing?

If you are going to pass a bill, make it equitable for all involved. H.R. 2848 needs to be fixed. Please get it right. Thank you for your time.

Sincerely,

Delvin G Orth
Mary J. Orth

Delvin G. Orth
Mary J. Orth

copy: Rep. Thomas E. Petri
6th District Wisconsin

copy: disk

K-SAT BROADCASTING INC.

COMMITTEE OF 435

"We The People"
JOHN BACKES
200 East Sumner
Hartford, Wisconsin 53027
Telephone 1-414-673-6135

RECEIVED
MAY 13, 1988
Sub on Courts

HONORABLE CONGRESSMAN ROBERT KASTENMEIER
U.S. HOUSE
WASHINGTON, DC

DEAR CONG. KASTENMEIER:

HR 2848

ROSES ARE RED VIOLETS ARE BLUE
I'M WRITING THIS POEM TO GET THRU TO YOU!

THE COPY RIGHT BILL HAS BEEN PLAYED WITH TOO LONG
BECAUSE AS WRITTEN THIS BILL IS ALL WRONG.

UNFAIR PRICING AND CABLE CONTROL
MUST BE REMOVED IF THIS BILL IS TO GO.

MANDATORY ACCESS IS TRULY A MUST
IN ORDER TO GET PROGRAMING DELIVERED TO US.

THIS LAW MUST COVER BOTH KU AND C-BAND
OR ANY FUTURE WAVE LENGHT THAT'LL COVER THIS LAND.

K-SATS 8 POINTS GIVE CONSUMERS THE BREAK
THAT WILL GIVE ACCESS AND FAIRNESS THE CABLE CARTEL WANTS TO TAKE.

SO DO WHAT IS RIGHT AND VOTE A BILL IN
WITH KSATS 8POINTS, ACCESS AND KU WE ALL WILL THEN WIN!!!!

SINCERELY

John M Backes

JOHN G. BACKES

#2 Beach Drive
Danbury, CT 06811

May 17, 1988

Congressman Robert Kastenmier
U. S. House of Representatives
Washington, D.C. 20515

RE: Satellite TV Legislation

Dear Congressman Kastenmier:

As a lifelong Wisconsin resident and graduate of the University of Wisconsin as well as a current Wisconsin taxpayer (see attached), I support the current legislation that calls for an equitable program payment schedule for satellite dish owners. However, there is one matter that to my knowledge has not been included in the legislation; namely, the recent scrambling of baseball signals by major league teams.

Last year due to business reasons my family and I reluctantly moved to Connecticut from Milwaukee, Wisconsin. Although I maintain a business in Wisconsin and pay Wisconsin state taxes I have been unable to get back to the state frequently. Therefore, I purchased a satellite system with the sole intent of watching the Milwaukee Brewers, Packers and Badgers. This was all working fine until the Major League teams decided to scramble their baseball games this spring. Unfortunately, the scrambling system they chose is not available for purchase. Therefore, I would ask that you include in the legislation:

1) Any scrambling of programming be made available on a equal access basis.

2) That this scrambling be done in the industry accepted format (VCII), not an entirely new format (VCI).

3) That in addition to this, that the programming fee be reasonable and commensurate with the fee charged television stations and networks using the current scramble baseball feeds.

Any help you can give a fellow displaced Wisconsinite will be greatly appreciated. Wouldn't you dread the thought of having only access to the Yankees and Mets after investing over $3500 in a satellite system?

Sincerely,

George Conway

Attachment

[illegible]
P.O. BOX [illegible]
[illegible] BLUEFIELD AVENUE
BLUEFIELD, W.VA. [illegible]
PHONE: [illegible]
FAX: [illegible]

BLUEFIELD
DISTRIBUTING
COMPANY

2400 MAGNOLIA COURT
RICHMOND, VIRGINIA [illegible]
PHONE: (804) [illegible]
FAX: (804) [illegible]

September 12, 1988

Chairman Robert Kastenmeier
2328 Rayburn House Office Building
Washington, DC 20515-2107

Dear Chairman Kastenmeier:

H.R. 2848, the "Satellite Home Viewer Copyright Act of, 1988" should be passed without delay to promote the satellite delivery of network and independent superstations to home satellite viewers everywhere.

Given past disputes concerning the authority of signal providers to sell broadcast programming by satellite, your Bill presents a much needed clarification at a time in which equipment suppliers like myself need it the most.

Swift passage of this bill will assure that all Americans, no matter where they may reside, have access to network and independent programming. With that access, the industry, and small business like my own, will continue to be able to compete effectively. Without it we most certainly will lose that ability.

Respectfully

George Leedy

George Leady
Satellite Sales Mgr.
Western Division

cc: Hon. Rick Boucher
Hon. John Bryant
Hon. Carlos Moorhead
Hon. Mike Synar